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PART II—Section 2

Bills and Reports of Select Committees on Bills

HOUSE OF THE PEOPLE

The following Report of the Select Committee on the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith, was presented to the House of the People on 5th November, 1952:—

MEMBERS OF THE SELECT COMMITTEE

Shri T. T. Krishnamachari (*Chairman*).
Shri Chimanlal Chakubhai Shah
Shri V. B. Gandhi
Shri Ghamandi Lal Bansal
Shri Mukand Lal Agarwal
Shri Raghubir Sahai
Shri Sinhasan Singh
Shri C. R. Bassapa
Shri Balwant Sinha Mehta
Shri Asim Krishna Dutt
Shri Lalit Narayan Mishra
Shri Mathura Prasad Mishra
Shri R. P. Navatia
Shri Ahmad Mohiuddin
Dr. Ram Subhag Singh
Shri P T. Thanu Pillai
Shri G R. Damodaran
Shri K. T. Achuthan
Shri Satis Chandra Samanta.
Shri Jagannath Kolay
Shri C. R. Chowdary
Shri Umashankar Muljibhai Trivedi

Shri Tulsidas Kilachand
Shri Amjad Ali
Shri Rayasam Seshagiri Rao
Shri G. D. Somani
Shri Dev Kanta Borooah
Shri Bhawanoji A. Khimji
Shri Bhagwat Jha Azad
Shri Satish Chandra
Shri Radhelal Vyas
Shri Feroze Gandhi
Shri D. P. Karmarkar
Shri Chintaman Dwarkanath Deshmukh

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

Clause 3.—The Select Committee think that this provision should be made more flexible and that the reference therein to a full-time member-Secretary should be deleted. This clause has been redrafted accordingly.

Clause 4.—Sub-clause (*e*) has been slightly amended so that the Commission will be enabled to undertake the inspection of accounts of a recognised association whenever it thinks fit, without having to wait for a direction from the Central Government in this behalf.

Clause 5.—The Select Committee have amended sub-clause (*2*) to provide expressly for the prescription of additional particulars which every application for recognition should contain.

Clause 6.—It is now expressly provided in the redrafted sub-clause (*1*) that the recognition granted to an association may be subjected to conditions and shall specify the goods or classes of goods with respect to which the association has been recognised.

Sub-clause (*4*) has been amended to provide for the publication of the recognition in the local Official Gazette also, and further to provide that the recognition shall have effect as from the date of its publication in the Gazette of India.

Clause 8.—Sub-clause (*2*) (*c*) has been amended so as to authorise the inspection of the accounts of members of a recognised association also, while the amendment to sub-clause (*3*) is intended to ensure that all persons who have had dealings with any of the other persons specified in that sub-clause are under an obligation to produce the accounts in their possession if so required.

Clause 10.—The Select Committee feel that there is no need to specify any particular provision of the Act with reference to which a recognised association may be directed to make rules; nor is it necessary to restrict

the discretion of the Central Government to fix a period for compliance with its directions. They also think that the modification of any rules under sub-clause (2) should be left to the discretion of the Central Government and not be made dependent upon an agreement between the association and the Central Government. This clause has been amended accordingly.

Clause 11.—The Select Committee feel that where the period of suspension is likely to exceed one month, the governing body should be given an opportunity of being heard in the matter and a proviso has been added accordingly.

Clause 18.—The Select Committee have carefully considered the provisions of this clause and the various views expressed thereon. But in their opinion the law should not be made applicable to non-transferable specific delivery contracts at all except to the extent to which such contracts are likely to be used for speculative purposes. To prevent such use, a provision preventing the formation of associations which will provide facilities for that purpose is all that in their opinion is needed. Sub-clause (1) is intended to give effect to this purpose.

Sub-clause (2) gives the Central Government power to exempt transferable specific delivery contracts from the operation of all or any of the provisions of Chapters III and IV in any area and this, in the opinion of the Select Committee, would be a better method of dealing with this matter than to rely on the power of exemption given under clause 27.

Clause 20.—The amendment is designed to provide penalties for the contravention of the provisions contained in clauses 8(3) and 18 (1).

Clause 21.—A new sub-clause (g) has been added providing for the punishment of dissemination of false statements or information affecting or tending to affect the course of business in forward contracts.

2 The Bill was published in the Gazette of India, Part II, Section 2, dated 9th August, 1952.

3. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

T. T KRISHNAMACHARI,

Chairman of the Select Committee.

NEW DELHI;

The 5th November, 1952.

MINUTES OF DISSENT

I

This Bill, intended to regulate and control Forward Trading and to check unhealthy speculation, will have very limited effect. On a Notification being issued by Government under Section 15, no Forward Contract can be effected in the commodity and in the area mentioned in the

Notification except through a Recognised Association. Unrestricted forward trading and consequent speculation may go on in all other commodities and in all other areas. The Government can take some action in such cases under Section 17 but that would be rare and generally belated. Under section 15, the Government is likely to control Forward Trading only in important agricultural commodities like cotton, jute and oil seeds and only in important centres like Bombay, Calcutta etc.

In fact, a hedge market is necessary only for agricultural commodities. Forward Contracts for specific delivery, transferable or non-transferable take place in almost all commodities but no hedge market or a future contract is necessary for that purpose. But war time legislation has shown that specific delivery contracts can be and are abused for heavy speculation unless controlled and hence they have also to be brought under this Bill.

It is well-known that heavy speculation is going on in all kinds of commodities like Chamak (Artificial Silk Yarn), cloves, pepper, cardamom, mercury, turmeric, copra, oil and in many other commodities. Mushroom Associations spring up even in small towns to provide facilities for such speculation. These Associations under their bye-laws take wide powers for themselves, particularly with regard to compulsory squaring up of transactions and dispensing with actual delivery of goods. Traders and merchants, small and big speculate through these Associations, but it is generally the big speculator who succeeds to the ruin of the small one. Because of such unhealthy speculation in all these commodities and cornering of markets by speculators, the producer, the manufacturer and the consumer is at the mercy of the speculator. It is a large and growing menace, which if not checked, is likely to affect seriously the economy of the country. The crisis in Forward Markets in March-April of this year ruined thousands of people as also producers, manufacturers and consumers because of excessive over-trading by the speculators.

There are two ways of checking such unhealthy speculation. One is to prohibit forward trading except in commodities permitted by the Government. This is not difficult to achieve, particularly when non-transferable specific delivery contracts are being exempted from the operation of this Act. If, however, such a general ban is considered difficult of enforcement at present on account of administrative difficulties, another way to achieve the same object is to prohibit the organisation of unrecognised associations which provide facilities for such speculation. It is these Associations with wide powers to themselves which facilitate speculation. The Governing Bodies of such Associations are formed of interested parties and vested interests. Experience shows that it is only when an Association of this kind provides facilities for large scale forward trading that speculation becomes easy. Unless such Associations are abolished and prohibited, this bill will not touch even the fringe of the problem. It should not be difficult to do so, particularly when non-transferable specific delivery contracts are taken out of the operation of this Act. 95 per cent., if not more, of Forward Contracts are of non-transferable nature, made between party and party which are and can be performed by the parties themselves. When non-transferable contracts are found to have been abused for speculation, it is only because of the existence of an Association which provides facilities to do so.

I would, therefore, add a clause in the Bill on the following lines after clause 14:—

"(1) No person shall organise or assist in organising any association, for the regulation and control of Forward Contracts except for the purpose of obtaining recognition under Section 5.

(2) No person shall be a member of any association having for its object regulation and control of Forward Contracts, unless it be a recognised association."

would strongly urge upon the Government to consider this proposal.

There are some other provisions of the Bill as amended by the Select Committee on which I would like to say something but they are of a minor nature and I need not discuss them in this note.

NEW DELHI;

C. C. SHAH.

The 5th November, 1952.

II

We are in disagreement with our colleagues on what we consider to be a major issue and have therefore thought it necessary to write this minute of dissent for the purpose of explaining our point of view.

2. *Main object of the Bill.*—The main object of this Bill is to regulate and control Forward Contracts in order to prevent unhealthy trading outside a recognised association and its injurious effects. In fact the only criterion for judging the adequacy and effectiveness of the present legislation is to find out whether its provisions can definitely result in the realisation of that objective We are convinced that the change agreed to by a majority of our colleagues in Clause 18 of the Bill (as it was introduced on 11th August 1952) will defeat the very object for which the Bill is said to have been framed and introduced.

3. *War time.*—During war time forward trading was altogether prohibited under the Defence of India Rules, but as this was found to be inconvenient, trading in a new category of forward contract, *viz.*, non-transferable specific delivery contract at a specified price to a specific party and for specific delivery was permitted Even the elaborate definition of such contracts was found to be vague and difficult of interpretation. Whatever reasons there might have been for creating this new variety of forward contract during war time, the same do not exist any more and the Bombay Act passed in 1947 (*i.e.* after the war) makes no mention of this variety of contract.

4. *Present time normal.*—In normal times—and now eight years after the cessation of hostilities the war time abnormalities must be taken not to be there—there can really be only two methods of transacting business: by making (a) ready delivery contracts and (b) Forward Contracts. The Bombay Forward Contracts Control Act of 1947 has recognised only these two categories of contracts and this Act has worked satisfactorily.

5. *Regulation of Forward Contracts necessary.*—In the case of ready delivery contracts there is no scope for speculation because the delivery of goods and payment of price therefor take place almost immediately. In

the case of Forward Contracts there is a time lag between the date of the contract and the date of its performance with a likelihood of fluctuations in prices between these two dates. There is possibility of benefitting as also of losing by such fluctuations. It is conceded that within reasonable limits and under proper regulations, doing business on the basis of an intelligent anticipation of price variations is permissible and in some measure helps in stabilizing market conditions. Unfortunately it has been found by experience that the temptation to take advantage of the changing prices in the hope of making profits without much regard to the interests of the consumers proves too strong to a small section of the people. It is the effort of the Government to stop such undesirable activities and coercive powers of the law are acquired and invoked for the purpose. The present Bill is intended for achieving that object.

6. *Bill No. 109 of 1950.*—In 1950 when the Forward Contracts (Regulation) Bill was introduced in Parliament it contained a Clause that its Chapters III and IV should not apply to Non-transferable Specific Delivery Contracts. Responsible commercial opinion took objection to this exclusion on the ground that it would definitely leave a loophole for unhealthy speculation and that under its guise undesirable activities would go on unhampered. The matter was also raised in Parliament and it was pointed out that uncontrolled speculation was going on in Phatka (Jute) and oilseeds in various States by utilising the so-called non-transferable specific delivery contracts as ordinary forward contracts in spite of forward trading as such being not permitted. The State Governments were even asked by the Central Government to take action in the matter. When the Bill went up to the Select Committee in 1951 and was being considered by it in detail several instances were cited of the abuses of the exemption of non-transferable specific delivery contracts. It was shown to the Committee that such contracts virtually became in actual practice ordinary forward contracts and the exemption that was granted was thus abused.

7. *Report of Select Committee dated 20th August* 1951.—After taking evidence, the said Select Committee came to the conclusion that Clause 18 of the Bill required to be amended and the Clause was re-drafted providing that Chapters III and IV shall apply to non-transferable specific delivery contracts in such areas as may be specified in a notification issued simultaneously with the notification under Clause 15. This shows that the Select Committee was conscious of the fact that the area for regulation of non-transferable specific delivery contracts by a recognised Association would be smaller than, and not coterminus with, the larger area for which an association may be recognised under the Act for Forward Trading.

8. *Bill No. 109 of 1950 lapsed and present Bill introduced.*—Thereafter with the dissolution of Parliament the Bill lapsed. It was reintroduced in August 1952 practically in the same form in which it had been finalised by the Select Committee of 1951. Its Clause 18 provided that non-transferable specific delivery contracts should not be exempted from the operation of its Chapters III and IV as recommended by the Select Committee of 1951. The Minister for Commerce, Shri T. T. Krishnamachari, while introducing the Bill, in the House of the People on 11th August 1952 justified the bringing of the non-transferable specific delivery contracts within the purview of the Bill on the ground that if that was not done there would be "speculation outside the recognised Association under the guise of non-transferable specific delivery contracts".

9. *Select Committee's alteration of Clause* 18.—In the context of all this recent history, it is surprising that a majority of the present Select Committee which considered this Bill has now taken a different view and has recommended exemption to such non-transferable specific delivery contracts. We are unable to understand the reasons for this change of opinion. The cases of abuse cited previously have not been challenged. No fresh evidence has been brought to prove that the exemption does not really work as a loophole for facilitating unauthorised forward trading outside Government regulations. In fact the possibility of that abuse is as real today as it has been in the past and will continue to be so in future also. Obviously there is some misapprehension somewhere which has led to such a curious and, in my considered opinion, harmful amendment to the Original Clause. In practice it will tend to give rise to a large volume of unauthorised forward trading outside the recognised association, thereby creating unhealthy and chaotic conditions.

10. *Abuse of Non-transferable specific delivery contract.*—It may be argued that even in the Clause as it stands amended by the Select Committee provision has been made to enable Government to apply Chapters III and IV to non-transferable specific delivery contracts if it is found that their exemption from the operation of these Chapters does leave a loophole for unregulated forward trading. But the experience of the last few years has precisely been that such a loophole is inseparable from the fact of the exemption and that it is inevitably exploited in a manner which does harm to the interests of the community. It is much wiser to prevent the occurrence of the mischief and the damage that it is bound to cause than to permit it to be committed and to suffer its evil consequences before prohibitive action is taken.

11. *No* bona fide *trader affected by original Clause* 18.—There seems to be a belief in some quarters that if non-transferable specific delivery contracts are brought within the purview of the Bill, the small upcountry trader will be severely handicapped and that the *bona fide* trader may be greatly inconvenienced. Such a belief is entirely unfounded and misplaced. The recognised association will generally be recognised only for a city or for some such limited area and, except in a few exceptional cases its authority will not extend beyond that area. Even in the case of an association recognised for areas larger than a city area, the control of the Association over non-transferable specific delivery contracts would be limited to the city area. This was the intention of the original Clause 18 of the present Bill No. 90 of 1952. No *bona fide* upcountry trader will have, therefore, any difficulty whatever in carrying on his normal business and entering into contracts for non-transferable specific delivery. The imaginary conflict between the urban trader and the upcountry trader does not really exist. There is no question of big business being enabled to wipe out a small business because of the non-exemption of the non-transferable specific delivery contracts from the operation of the Bill.

12. *Bombay Act has worked satisfactorily.*—The Bombay Forward Contracts Control Act of 1947 has been in operation for over five years. As has been stated above it recognises only two categories of contract *viz.*, forward contracts and ready delivery contracts. Yet its working has not resulted in any dislocation in trade nor inconvenienced any *bona fide* traders. In fact the measure has been quite successful in effectively

controlling forward trading without causing hardship to business or trade or anybody else.

13. *Restrictions on trade.*—After all, any law which is intended to regulate and control forward contracts will, in the nature of things, impose certain restrictions, but care has to be taken to see that such restrictions and regulations do not become so unduly rigid or so unduly pliable as to result in avoidable hardship or avoidable evasions. The attempt to regulate trade through the agency of properly organized associations and the introduction of unitary control in respect of vital commercial transactions are steps in the right direction. There cannot therefore be any valid objection to the work of regulating business in non-transferable specific delivery contracts (at least in specified areas) being entrusted to such associations. In fact that would be the proper course to follow. It cannot be construed, *prima facie*, as creating wittingly or unwittingly privileged conditions in favour of the members of recognised associations. The constitution, functions and powers of these bodies are subject to scrutiny, regulation and approval by the Government. That in itself is a sufficient safeguard against any eventuality detrimental to the interest of the country or the people.

14. *Conclusion.*—We are therefore, definitely of opinion that Clause 18 of the Bill as it was introduced on 11th August 1952 should stand as it was and that the amendment suggested by our colleagues should not be accepted. If the amendment is accepted the fundamental object of regulating and controlling forward contracts will be entirely frustrated.

TULSIDAS KILACHAND.
G. D. SOMANI.

NEW DELHI;
The 5th November, 1952.

III

I agree with this report of the Select Committee in its entirety. As I pointed out at the meeting of the Select Committee on the 7th October, 1952, I do not agree to the words "as well as the company" occurring in clause 22 line 47 of the Bill printed along with the draft report, briefly for the following reasons.

The Bill does not provide for any special procedure for the trial of offences for which penalty has been provided in Chapter V. Therefore, trial of all contraventions must needs be governed as provided for offences against other laws at the end of schedule II of the Criminal Procedure Code. But in the Criminal Procedure Code there is no provision for placing in the dock a company as defined in the Bill. Obviously making a company accused will militate against a number of provisions of the Criminal Procedure Code, for example those relating to custody of accused, appearance of accused before courts, framing of charges and reading and explaining the same to the accused. Moreover the retention of these words in redundant for the persons mentioned in sub-clauses (1) and (2) include almost all the persons whom it may be necessary or desirable to prosecute. I fail to appreciate who else is contemplated to be proceeded against by the addition of these words. Even as these sub-clauses stand the phraseology adopted therein is not happy as the provisions in the two sub-clauses may

prove over-lapping. "Every person who was in charge of, and was responsible to the company for the conduct of the business of the company" of sub-clause (1) may be identical with "such Director, Manager, Secretary or other Officer" of sub-clause (2).

The only argument that was advanced for the inclusion of "company" in the array of accused was the ground that in two previous enactments the same wording has been employed. I respectfully submit that in Legislation customary prescription is hardly a valid ground. I refuse to bow before or recognise this argument.

On the contrary I can also give examples of previous Legislation in support of my contention, where and I think wisely in accordance with law "company" has not been placed in the array of accused. One such example is found in section 12 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act III of 1947.

In my opinion it is more logical and legal to follow the example of this enactment and drop out the words "as well as the company" in sub-clause 1 of clause 22.

MUKAND LAL AGGARWAL.

NEW DELHI;
The 5th November, 1952.

IV.

I have gone through the copy of the Report of the Select Committee as well as the Bill and the Forward Contracts (Regulation) Bill 1952 as amended by the Committee I find at the last clause of Section 7 it has been provided as follows:—

> "Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date."

It seems to me little ambiguous. In the first part of the said clause all contracts entered into and made before the date of notification have been clearly protected.

Under the circumstances it is not clear what is the necessity of a notification again to protect them over again. It makes the clause bit ambiguous. Perhaps by the last portion of the said clause it is intended to mean that the Government by Notification can provide the manner in which all these outstanding contracts should be performed. If that is so the word "due" is not appropriate. Instead of the word "due" I suggest the word "manner of" or the word "mode of" may be used. I agree with the Bill as amended subject to the above suggestion.

A. K. DUTT.

NEW DELHI;
The 5th November, 1952.

V.

I approve of the report of the Select Committee subject to these minutes.

The provision in Clause 20(1) and in Clause 21 cognizable needs a reconsideration. Offences of this nature are not easily classifiable as grave or tainted with any high degree of moral turpitude. Certainly they are not more serious than an offence under Section 477A of the Indian Penal Code which is noncognizable though punishable with seven years rigorous imprisonment.

The small traders and merchants have already too many technical offences acting as swords of Damocles over them and adding several more to these can only increase the dishonest interference with their legitimate business by the police.

We have no provision in our country whereby the police is made to compensate those who are harrassed without any reasonable or probable cause. Absence of this provision leads to every day harrassment of the general public and specially on such technical matters in measures which are embodied in anti-social legislation. There are hundreds of false cases where the police have extorted moneys or have used this bogey of cognizable offences for their own dishonest ends.

It would be therefore in the interest of society that this clause be omitted from the Act.

U. M. TRIVEDI.

NEW DELHI;
The 5th November, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(*Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*)

BILL No. 90 OF 1952

A

BILL

to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Forward Contracts (Regulation) Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Chapter I shall come into force at once, and the remaining provisions shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(*b*) "Commission" means the Forward Markets Commission established under section 3;

(*c*) "forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract ;

(*d*) "goods" means every kind of movable property other than actionable claims, money and securities;

(*e*) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);

(*f*) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;

(*g*) "option in goods" means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a put, a call or a put and call in goods;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

(*j*) "recognised association" means an association which is for the time being recognised by the Central Government under section 6;

(*k*) "rules", with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;

(*l*) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

(*m*) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to

be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;

(*n*) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract.

CHAPTER II

THE FORWARD MARKETS COMMISSION

3. Establishment and constitution of the Forward Markets Commission.—(*1*) The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

(*2*) The Commission shall consist of not less than two, but not exceeding three, members appointed by the Central Government of whom the Chairman * * * (* to be appointed by the Central Government) shall be a full-time member and the other member or members shall be full-time or part-time as the Central Government may direct :

Provided that one of the members to be so appointed shall be a person having knowledge of forward markets in India.

(*3*) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

(*4*) No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for reappointment.

(*5*) The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

4. Functions of the Commission.—The functions of the Commission shall be—

(*a*) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act;

(*b*) to keep forward markets under observation and to draw the attention of the Central Government or of any other prescribed authority to any development taking place in, or in relation to, such markets which, in the opinion of the Commission, is of sufficient importance to deserve the attention of the Central Government and to make recommendations thereon;

(*c*) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to

submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;

(*d*) to make recommendations generally with a view to improving the organisation and working of forward markets;

(*e*) to undertake the inspection of the accounts and other documents of any recognised association whenever it considers it necessary; and

(*f*) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

CHAPTER III

RECOGNISED ASSOCIATIONS

5. Application for recognition of associations.—(*1*) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

(*2*) Every application made under sub-section (*1*) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular, to—

(*a*) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(*b*) the powers and duties of the office bearers of the association ;

(*c*) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto ;

(*d*) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks.

6. Grant of recognition to association.—(*1*) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.

(2) Before granting recognition under sub-section (1), the Central Government may, by order, direct,—

(a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;

(b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of, the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.

(3) No rules of a recognised association shall be amended except with the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

7. Withdrawal of recognition.—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the Official Gazette, the recognition granted to the said association:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

8. Power of Central Government to call for periodical returns or direct inquiries to be made.—(1) Every recognised association shall furnish to the Central Government such periodical returns relating to its affairs or the affairs of its members as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1), where the Central Government considers it expedient so to do, it may, by order in writing,—

(a) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may require, or

(b) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representatives of the Central Government; and

(*c*) direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government.

(*3*) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (*2*)—

(*a*) every director, manager, secretary or other officer of such association,

(*b*) every member of such association, *

(*c*) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm, and

(*d*) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (*a*), (*b*) and (*c*),

shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject-matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

9. Furnishing of annual reports to the Central Government by recognised associations.—(*1*) Every recognised association shall furnish to the Central Government a copy of its annual report.

(*2*) Such annual report shall contain such particulars as may be prescribed.

10. Power of Central Government to direct rules to be made or to make rules.—(*1*) Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(*2*) If any recognised association, against whom an order is issued by the Central Government under sub-section (*1*), fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Central Government may think fit

(*3*) Where, in pursuance of sub-section (*2*), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or any other law for the time being in force, have effect as if they had been made or amended by the recognised association concerned.

11. Power of recognised association to make bye-laws.—(*1*) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(*a*) the opening and closing of markets and the regulation of the hours of trade;

(*b*) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house;

(*c*) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(*d*) fixing, altering or postponing days for settlement;

(*e*) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;

(*f*) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(*g*) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;

(*h*) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(*i*) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;

(*j*) the levy and recovery of fees, fines and penalties;

(*k*) the regulation of the course of business between parties to contracts in any capacity;

(*l*) the fixing of a scale of brokerage and other charges;

(*m*) the making, comparing, settling and closing of bargains;

(*n*) the regulation of fluctuations in rates and prices;

(*o*) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;

(*p*) the regulation of dealings by members for their own account;

(*q*) the limitations on the volume of trade done by any individual member;

(r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.

(3) The bye-laws made under this section may—

(a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of section 15;

(b) provide that the contravention of any of the bye-laws shall—

(i) render the member concerned liable to fine; or

(ii) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

12. Power of Central Government to make or amend bye-laws of recognised associations.—(1) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

13. Power of Central Government to supersede governing body of recognised association.—(*1*) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the Official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the chairman and another of such persons to be the vice-chairman.

(*2*) On the publication of a notification in the Official Gazette under sub-section (*1*), the following consequences shall ensue, namely:—

(*a*) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(*b*) the person or persons appointed under sub-section (*1*) may exercise and perform all the powers and duties of the governing body which has been superseded;

(*c*) all such property of the recognised association as the person or persons appointed under sub-section (*1*) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(*3*) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (*1*), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may, from time to time, by like notification vary such period.

(*4*) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (*1*) shall, notwithstanding anything contained in sub-section (*1*), continue to exercise and perform their powers and duties.

(*5*) On the reconstitution of a governing body under sub-section (*4*), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (*1*) shall vest or revest, as the case may be, in the governing body so reconstituted.

14. Power to suspend business of recognised associations.—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time :

Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

CHAPTER IV

FORWARD CONTRACTS AND OPTIONS IN GOODS

15. Forward contracts in notified goods illegal or void in certain circumstances.—(*1*) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

(*2*) Any forward contract in goods entered into in pursuance of sub-section (*1*) which is in contravention of any of the bye-laws specified in this behalf under clause (*a*) of sub-section (*3*) of section 11 shall be void—

(*i*) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(*ii*) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(*3*) Nothing in sub-section (*2*) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract :

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (*a*) of sub-section (*3*) of section 11.

(*4*) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (*1*), enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16. Consequences of notification under section 15.—Where a notification has been issued under section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(*a*) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts;

(*b*) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (*a*) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contracts in certain cases.—(*1*) The Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(*2*) All forward contracts in contravention of the provisions of sub-section (*1*) entered into after the date of publication of the notification thereunder shall be illegal.

(*3*) Where a notification has been issued under sub-section (*1*), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15.

18. Special provisions respecting certain kinds of forward contracts.—(*1*) Nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in India (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or to receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area the provisions of section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

19. Prohibition of options in goods.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.

(2) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent, become void.

CHAPTER V

PENALTIES AND PROCEDURE

20. Penalty for contravention of certain provisions of Chapter IV.—(1) Any person who—

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (3) of section 8; or

(b) organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18; or

(c) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) of section 15, section 17 or section 19,

shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Any person who enters into any forward contract in contravention of the provisions contained in sub-section (4) of section 15 shall, on conviction, be punishable with fine.

21. Penalty for owning or keeping place used for entering into forward contracts in goods.—Any person who—

(*a*) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(*b*) without the permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(*c*) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

(*d*) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

(*e*) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association; canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(*f*) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(*g*) makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts in respect of goods to which the provisions of section 15 have been made applicable,

shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both.

22. Offences by companies.—(*1*) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

23. Certain offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any offence punishable under sub-section (1) of section 20 or section 21 shall be deemed to be a cognizable offence within the meaning of that Code.

24. Jurisdiction to try offences under this Act.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

CHAPTER VI

MISCELLANEOUS

25. Advisory Committee.—For the purpose of advising the Central Government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed.

26. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified, be exercised by such officer or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

27. Power to exempt.—The Central Government may, by notification in the official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

28. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the terms and conditions of service of members of the Commission;

(*b*) the manner in which applications for recognition may be made under section 5 and the levy of fees in respect thereof;

(*c*) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

(*d*) the particulars to be contained in the annual reports of recognised associations ;

(*e*) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

(*f*) the constitution of the advisory committee established under section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the advisory committee for advice;

(*g*) any other matter which is to be or may be prescribed.

The following Report of the Select Committee on the Bill further to amend the Administration of Evacuee Property Act, 1950, was presented to the House of the People on 5th November, 1952:—

MEMBERS OF THE SELECT COMMITTEE.

Pandit Thakur Das Bhargava—*Chairman.*

Lala Achint Ram,

Shrimati Subhadra Joshi,

Shri Jagannathrao Krishnarao Bhonsle,

Shri Narendra P. Nathwani,

Shri H. C. Heda,

Shri Nemi Chandra Kasliwal,

Shri Ram Pratap Garg,

Pandit Chatur Narain Malviya,

Shri Jwala Prasad,

Giani Gurmukh Singh Musafir,

Shri Syed Mohammad Ahmad Kazmi,

Col. B. H. Zaidi,

Shri Digambar Singh,

Shri Mulchand Dube,

Shri Kanhaiya Lal Balmiki,

Shri Syed Ahmad,

Pandit Lakshmi Kanta Maitra,

Shri Basanta Kumar Das,

Shri Radha Charan Sharma,

Chaudhri Hyder Husein,

Shri Rohini Kumar Chaudhuri,

Shrimati Sucheta Kripalani,
Shri V. P. Nayar,
Shri Vishnu Ghanashyam Deshpande,
Shri Bhawani Singh,
Dr. Manik Chand Jatav-vir,
Shri Avadeshwar Prasad Sinha,
Shri P. N. Rajabhoj,
Shri Ajit Prasad Jain.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Administration of Evacuee Property Act, 1950 was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

2. Upon the changes proposed which are not formal or consequential, it may be noted as follows:—

Clause 4 (original).—The Committee has omitted this clause which purports to transfer the power of appointment of Custodians from State Governments to the Central Government because the Committee were given to understand that the State Governments desire that the existing position should continue.

Clause 4 (original clause 5).—The Committee felt that there should be some restriction upon the power of the Custodian to take charge of the management of a company. It has accordingly been provided that the Custodian shall not exercise such power except with the previous approval of the Central Government.

Clause 5 (original clause 6).—The Committee has limited the power of the Custodian to cancel prepartition leases to two specified cases, namely: (i) where the lease has been sublet; and (ii) where the lessee has used the property for a purpose other than that for which it was leased.

Clause 6 (original clause 7).—The Committee was of the opinion that where tenancy rights vest in the Custodian some provision should be made for safeguarding the interests of the original lessor. The Committee has accordingly provided that in such cases the Custodian shall not have the power to grant, without the consent in writing of the original lessor—(a) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; and (b) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease.

Clause 7 (original clause 8).—It has been made clear that where an application under section 16 is rejected there will be nothing to prevent the applicant from establishing his title to the property in a civil court.

Clause 8 (*original clause 9*).—The Committee felt that the words 'for any default of the evacuee' were far too sweeping. It was of the opinion that the exemption from eviction should apply only where an evacuee has made any default after he became an evacuee or within a period of one year preceding the date of his becoming an evacuee. Section 18 of the principal Act as substituted by this clause has been amended, accordingly.

Clauses 12 and 14 (*new*).—The amendments are consequential upon the omission of Chapter IV relating to 'intending evacuees'

Clause 13.—The limit of five thousand rupees in respect of exemption from confirmation of a transfer has been reduced to three thousand rupees. It has also been provided that in the case of transfers in respect of which the consideration exceeds such limit as may be prescribed by rules, the previous approval of the Custodian General shall be necessary. The position with respect to pending proceedings for confirmation of transfers has been made clear. A few drafting alterations have also been made.

Clause 16.—The amendments proposed to sub-section (3) of section 56 have been omitted in view of the omission of clause 4 of the Bill. It has also been provided that in future all rules made by the Central Government shall be laid before Parliament.

Clause 17 (*new*).—This new clause has been inserted to clarify the effect of repeal of Chapter IV relating to 'intending evacuees'. It has been provided that notwithstanding such repeal any property which is already vested in the Custodian under section 22 and any proceedings which are pending under that section shall not be affected.

3. The Bill was published in the Gazette of India, Part II, Section 2, dated the 9th August, 1952.

4. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

THAKUR DAS BHARGAVA,

Chairman of the Select Committee.

NEW DELHI;

The 5th November 1952.

MINUTES OF DISSENT

I

I disagree with the report of the Select Committee on the Administration of Evacuee Property (Amendment) Bill, 1952. There can be no two opinions about the policy of providing all possible facilities to all the loyal citizens of this country in their ordinary transactions. If there are

any genuine cases where this Administration of Evacuee Property Act is causing injustice to the members of a particular community, such injustice has to be removed. But in our anxiety to do justice to those few genuine cases we must not do anything whereby the Evacuee Property pool which has already considerably dwindled, would diminish still further and at the same time the relaxation in rules should not help those persons who had always the intention of leaving India and settling in Pakistan and are just waiting for opportunity to do so. After keeping the above mentioned principle before our eyes, I feel that the Bill in the present form will do greater harm than good.

In the first place the sweeping manner in which the sections in the Principal Act relating to the intending evacuee have been removed, is bound to re-act very unfavourably against the interests of India. In fact it was necessary to strengthen the sections regarding the intending evacuees instead of relaxing them. It is argued that the sub-clauses giving the definition of the intending evacuee have been incorporated in the definition of the evacuee itself by the addition of new clause; but I would like to point out that the date given in the definition was 14th day of August 1947 and now the Bill, as amended, gives the definition of evacuee as "who has, after the 18th day of October 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends". This means that a person who has transferred his assets before 18th day of October 1949 would escape the consequences of having done so. In fact there are many cases where the intending evacuees have acquired huge properties in Pakistan and transferred considerable portion of their properties from India to that Dominion and are waiting in India only to dispose of the remaining property. By this elimination of the clause relating to the intending evacuee and relaxation regarding the date, the work of these intending evacuees has become much easier. I would suggest that in addition to retaining the old date of 14th day of August 1947, we have to add a clause whereby persons whose families including the wife and children are continuously staying in Pakistan should come under the category of the intending evacuee. The proposal to drop the clause which includes "any person against whom an intention to settle in Pakistan is established from his conduct or from documentary evidence" is also giving latitude to those persons who want to leave India and go over to Pakistan. In no case persons against whom there is documentary evidence or against whom it can be established from their conduct that they are intending to go to Pakistan, should be exempted from the operation of the Administration of Evacuee Property Act.

(2) I also oppose the clause 6 of the Bill as amended by the Select Committee. The restoration of evacuee property ought to be entrusted to some judicial authority and not even to the Custodian or Custodian-General. The Custodian even, though quasi-judicial authorities, are actual administrators of the evacuee property and hence would not be able to apply judicial mind to the question and hence I propose that this matter be referred to some judicial officer of the grade of the District Judge. In no case it should be left to the discretion of the Government. Previously this authority was vested in the Custodian-General who was a quasi-judicial Officer and now it has been left entirely to the discretion of the Government.

(3) I also oppose Clause 13 of the Bill as amended by the Select Committee which deals with the validity of transfers respecting property subsequently declared to be evacuee property; though reducing the limit of property transferred to Pakistan from Rs. 5,000 to Rs. 3,000 is some satisfaction. On the whole the Section 40 as amended will do greater harm to the citizens of India than to those who want to leave this country. The Custodian while giving sanction to any transfer should have the power to refuse sanction to any transaction if there is an evidence that the person who is transferring his property is intending to opt to Pakistan provided that the intention to opt to Pakistan is established from the conduct of such person or from some documentary evidence.

It is really unfortunate that the majority in the Select Committee though agreed in principle to the point of view presented by the minority, could not see its way to support the amendments proposed by members belonging to minority groups. It is further to be noted that considerations of prestige particularly on the issue of vesting power into the Judicial Officer of exempting any properties from the operation of evacuee property came in the way of fair discussion on these clauses and hence the report on the Administration of the Evacuee Property (Amendment) Bill cannot be said to be the outcome of free discussion on the merits of the case, and hence I disagree with the report.

A promise was given on the floor of the House by the Hon'ble Minister that the Refugee Associations would be consulted and opportunities would be given to them to express their views on this important Bill. But it is unfortunate that the All India Refugee Association which wanted to place its views before the Committee was not given an opportunity to do so on the grounds that it was too late to do so. In fact such a measure should not be passed in a hurry and opportunity ought to have been given to Refugee Organisations to express their views.

V. G. DESHPANDE.

NEW DELHI;

The 5th November, 1952.

II

The provisions relating to the intending evacuees are sought to be softened as some of our politicians think they are too rigid. But in view of the present position it appears we are not justified in totally removing the provisions relating to intending evacuees. The Pakistan Government has not changed its attitude in any manner whatsoever and the proposed change has been adversely commented there. Anyhow I see no justification for those who have been found by the authorities to be intending evacuees to be removed from that category. In my opinion no harm will result in the retention of the provisions relating to this clause. I reserve to myself the right to move amendments.

SUCHETA KRIPALANI.

NEW DELHI;

The 5th November, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

BILL No. 91 OF 1952

A

BILL

further to amend the Administration of Evacuee Property Act, 1950.

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Administration of Evacuee Property (Amendment) Act, 1952.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 2, Act XXXI of 1950.—In section 2 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the principal Act),—* * *

(*a*) in clause (*1*),—

(*1*) at the end of sub-clause (*iii*), the word "or" shall be inserted, and after that sub-clause and before the *Explanation* thereto, the following clauses shall be inserted, namely:—

"(*iv*) who has, after the 18th day of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(*v*) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;";

(*2*) the *Explanation* to sub-clause (*iii*) shall be numbered as *Explanation I* and after that *Explanation* as so numbered, the following further *Explanations* shall be inserted, namely:—

"*Explanation II.*—For the purposes of sub-clause (*iv*), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central Government for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of his assets within the meaning of that sub-clause.

Explanation III.—For the purposes of sub-clause (*v*), the acquisition of any right to, interest in, or benefit from, any such property as is referred to in that sub-clause by a firm, private

limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause.";

(*b*) clause (*e*) shall be omitted;

(*c*) in clause (*f*), for the words beginning with ' "evacuee property" means' and ending with the words "to the extent of such right or interest," the following shall be substituted, namely :—

' "evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40.'

3. Omission of section 3, Act XXXI of 1950.—Section 3 of the principal Act shall be omitted.

* * * * *

4. Amendment of section 10, Act XXXI of 1950.—In sub-section (*2*) of section 10 of the principal Act, after clause (*l*), the following clause shall be inserted, namely:—

"(*ll*) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company:

Provided that the Custodian shall not take charge of such management of the Company except with the previous approval of the Central Government."

5. Amendment of section 12, Act XXXI of 1950.—In sub-section (*1*) of section 12 of the principal Act,—

(*a*) for the words "where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947" the following shall be substituted, namely:—

"whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act,"

(*b*) the following proviso shall be added, namely:—

"Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(*a*) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(*b*) has used or is using such property for a purpose other than that for which it was leased to him."

6. Insertion of new section 12A in Act XXXI of 1950.—After section 12 of the principal Act, the following section shall be inserted, namely:—

"12A. *Special provisions with respect to transfer of tenancy rights of evacuees.*—(*1*) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(*2*) On the making of any such declaration as is referred to in sub-section (*1*),—

(*a*) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(*b*) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (*1*) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(*3*) Nothing contained in this section shall—

(*a*) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest—

(*i*) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(*ii*) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease;

(*b*) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (*b*) of sub-section (*2*), or

(*c*) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian."

7. Amendment of section 16, Act XXXI of 1950.—In section 16 of the principal Act, for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"16. *Restoration of evacuee property.*—(*1*) Subject to such rules as may be made in this behalf, the Central Government or any person authorised by it in this behalf may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and, on being satisfied that it is just or proper so to do, grant

to the applicant a certificate stating that any evacuee property, which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, shall be restored to him.

(*2*) If the evacuee or, as the case may be, the heir to whom a certificate has been granted under sub-section (*1*) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian and in respect of which the certificate has been granted, the Custodian shall, on the production by the applicant of the certificate and subject to the other provisions contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(*2A*) On receipt of an application under sub-section (*2*), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry into the claim in such manner as may be prescribed shall—

(*a*) if he is satisfied with respect to the title of the applicant to the property, make a formal order restoring the property to the applicant; or

(*b*) if he is not so satisfied, reject the application, without prejudice to the right of the applicant to establish his title to the property in a civil court; or

(*c*) if he entertains any doubt with respect to the title of the applicant to the property, refer him to a civil court for the determination of his title thereto:

Provided that no order for the restoration of any evacuee property shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof."

8. Substitution of new section for section 18, Act XXXI of 1950.—For section 18 of the principal Act, the following section shall be substituted and shall be deemed always to have been substituted, namely :—

"18. *Occupancy or tenancy rights not to be extinguished.*—Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—* * *

(*a*) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(*b*) the Custodian."

9. Omission of Chapter IV, Act XXXI of 1950.—Chapter IV of the principal Act shall be omitted.

10. Amendment of section 24, Act XXXI of 1950.—In section 24 of the principal Act, in sub-section (*1*),—

(*a*) the word and figures "section 19" shall be omitted ;

(*b*) in the proviso, for the words, brackets, letters and figures "sub-clause (*iii*) of clause (*d*) of section 2, or that the property is not evacuee property within the meaning of sub-clause (*2*) of clause (*f*) of section 2," the words, brackets, letters and figure, "sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2," shall be substituted.

11. Amendment of section 25, Act XXXI of 1950.— In section 25 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person aggrieved by an order under section 7 declaring his property to be evacuee property on the ground that he is an evacuee within the meaning of sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2 may prefer an appeal, in such manner and within such time as may be prescribed, to the district judge nominated in this behalf by the State Government."

12. Amendment of section 26, Act XXXI of 1950.—Sub-section (*3*) of section 26 of the principal Act shall be omitted.

13. Substitution of new section for sections 40 and 41, Act XXXI of 1950.—For sections 40 and 41 of the principal Act, the following sections shall be substituted, namely:—

"40. *Validity of transfers respecting property subsequently declared to be evacuee property.*—(*1*) No transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(*2*) Nothing contained in sub-section (*1*) shall apply to the transfer for valuable consideration of any such property as is referred to therein in any of the following cases, namely:—

(*a*) where the transfer has been made with the previous approval of the Custodian before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952;

(*b*) where the transferor has not left or does not leave India for Pakistan within a period of two years from the date of the transfer:

Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement;

(*c*) where the transfer is made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, and—

(*i*) the value of the property transferred is less than three thousand rupees:

Provided that the transferor does not transfer any other property belonging to him within a period of one year from the date of the transfer; or

(*ii*) the value of the property exceeds three thousand rupees but the transfer is made with the previous approval of the Custodian or in the prescribed cases with the previous approval of the Custodian General.

(*3*) An application under sub-section (*1*) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (*1*) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to any such application.

(*4*) Where an application under sub-section (*1*) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(*a*) the transaction has not been entered into in good faith or for valuable consideration; or

(*b*) the transaction is prohibited under any law for the time being in force; or

(*c*) the transaction ought not to be confirmed for any other reason.

(*5*) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the Custodian has rejected any application for confirmation thereof solely on the ground—

(*a*) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(*b*) that the application was barred by limitation,

then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a civil court or other authority, but subject to any rules that may be made by the Central Government in this behalf, the Custodian may exercise any of the following powers in respect of the transfer, namely:—

(*i*) confirm the transfer if the consideration paid for the transfer is adequate;

(*ii*) confirm the transfer, if the transferee agrees to pay to the Custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(*iii*) if the transferee agrees, take possession of such part of the property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(*iv*) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(*v*) if the transferee does not agree to any of the courses referred to in clauses (*a*) to (*iv*) inclusive, auction the property and if the sale proceeds exceed the amount actually paid by the transferee, pay to the transferee the amount paid by him and take over the balance and if the sale proceeds are equivalent to, or fall short of, the amount actually paid by the transferee, pay the entire sale proceeds to the transferee:

Provided that where any application for confirmation of a transfer is rejected on the ground specified in clause (*b*) of this sub-section the powers conferred on the Custodian by this section shall not be exercised unless the Custodian finds that the transaction has been entered into in good faith." * * *

(*6*) If the application is not rejected under sub-section (*4*), the Custodian may confirm the transfer either unconditionally or on such terms and conditions as he may think fit to impose.

(*7*) The Custodian may, in respect of any application for confirmation of a transfer pending before him on the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, which is liable to be rejected on either of the grounds specified in clauses (*a*) and (*b*) of sub-section (*5*), exercise any of the powers conferred on him under that sub-section.

(*8*) For the removal of doubts, it is hereby declared that every property transferred in contravention of the provisions of this section which does not confer any rights or remedies in relation to the transfer on the parties thereto shall be deemed to be property declared to be evacuee property within the meaning of sub-section (*1*) of section 7 and to have vested in the Custodian in accordance with the provisions of section 8.

41 *Transactions relating to evacuee property void in certain circumstances*.—Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

14. Amendment of section 46, Act XXXI of 1950.—In section 46 of the principal Act, clause (*b*) shall be omitted.

15. Substitution of new section for section 52, Act XXXI of 1950.—For section 52 of the principal Act, the following section shall be substituted, namely:—

"52. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to or in relation to any class of persons or class of property."

16. Amendment of section 56, Act XXXI of 1950.—In section 56 of the principal Act,—

(*1*) in sub-section (*2*),—

(*a*) after clause (*b*), the following clause shall be inserted, namely:—

"(*bb*) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian General in respect of cases pending before any officer subordinate to him;";

(*b*) for clause (*q*), the following clause shall be substituted, namely:—

"(*q*) the manner in which applications for the previous approval of the Custodian may be made under section 40 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section;";

* * * * * * *

(*2*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) All rules made under sub-sections (*1*) and (*2*) after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952 shall be laid for not less than fourteen days before Parliament as soon as possible after they are made."

17. Effect of repeal of Chapter IV, Act XXXI of 1950.—(*1*) The repeal of Chapter IV of the principal Act shall not affect—

(*a*) any property which has vested in the Custodian under section 22 of the principal Act before the commencement of this Act, or

(*b*) any proceeding pending under that section on such commencement,

and any such property shall continue to so vest and any such proceeding may be continued as if this Act had not been passed.

(*2*) Save as aforesaid, on the repeal of Chapter IV of the principal Act, every order passed under section 19 of the principal Act declaring any person to be an intending evacuee and every attachment of property effected under that section shall cease to have effect and every proceeding pending under that section shall abate.

(*3*) Save to the extent to which it is otherwise provided in this section, the mention of particular matters in this section shall be without prejudice to the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

The following Report of the Select Committee on the Bill further to amend the Indian Income-tax Act, 1922, was presented to the House of the People on 7th November, 1952:—

MEMBERS OF THE SELECT COMMITTEE

Pandit Thakur Das Bhargava—*Chairman*

Shri C. D. Deshmukh,

Shri Mahavir Tyagi,

Shri S. Sinha,

Pandit Algu Rai Shastri,

Prof. Ram Saran,

Shri Ghamandi Lal Bansal,

Shri C. R. Basappa,

Shri Shantilal Girdharilal Parikh,

Shri Hari Vinayak Pataskar,

Shri Radheshyam Ramkumar Morarka,

Shri P. Natesan,

Pandit Chatur Narain Malviya,

Shri Ahmed Mohiuddin,

Shri A. K. Basu,

Dr. Panjabrao S. Deshmukh,

Col. B. H. Zaidi,

Shri C. P. Matthen,

Shri Purnendu Sekhar Naskar,

Shri Sohan Lal Dhusiya,

Shri P. N. Rajabhoj,

Shri Kamal Kumar Basu,

Shri N. C. Chatterjee,

Shri K. A. Damodara Menon,

Shri Tulsidas Kilachand,

Shri S. V. Ramaswamy.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Indian Income-tax Act, 1922 was referred, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed hereto.

1. Upon the changes proposed in the Bill which are not formal or consequential, the Select Committee note as follows:—

Clause 1.—The provision relating to commencement contained in clause 33 of the Bill has now been transferred to its appropriate place, and its wording has also been modified to make it clear that the whole Act shall be deemed to have come into force on the 1st day of April, 1952, so that the procedural provisions of the Act will apply to pending cases also. This commencement clause is, however, subject to the other special provisions in the Act respecting the extent of retrospective application of certain substantive provisions.

Clause 2.—In the proposed definition of "assessee" the word "whether with or without interest" have been omitted as unnecessary, in view of the words immediately following.

In the proposed definition of "previous year", certain words have been added to make it clear that section 2(11)(ii) applies only where the income of the firm has been assessed as a unit, and that where it is not so assessed and the partner is assessed direct, section 2(11) (i) will apply.

Clause 3.—The Select Committee have omitted the words "out of the remaining half" from item (iii) of the proposed fifth proviso to section 4(1) of the Act as it is immaterial from which amount any outstanding taxes are paid.

The amendment to *Explanation 2* to section 4(1) has been redrafted to make it clear that no exemption is available in respect of pension payable to High Court Judges appointed after the 14th day of August, 1947.

The Select Committee have also recast the proposed clause (i) to sub-section 4(3) so that it is made clear—

(*a*) that the income is exempt even if it is not applied to religious or charitable purposes in one year but is accumulated for application to such purposes subsequently;

(*b*) that the charitable purposes should normally relate to something done within the taxable territories and that in cases where such purposes are without the taxable territories, the income will not be exempt unless the Central Board of Revenue grants the necessary exemption; and

(*c*) that the exempted income is liable to tax when it is diverted to any other purpose or ceases to be set apart for religious or charitable purposes.

The amendment in the proposed new item (xvi) in section 4(3) is to cover bonds issued by industrial enterprises or financial corporations obtaining loans from the International Bank for Reconstruction and Development when such loans are guaranteed by the Central Government.

With respect to the proposed clause (xix) of section 4(3), the Select Committee are of the view that any daily allowance paid to members of any Legislature, whether before or after the commencement of this Act, should not be subjected to tax because it is really not income.

Clause 4.—With respect to sub-clause (e), the Select Committee feel that the existing right of appeal from the orders of Inspecting Assistant Commissioners to the Commissioner should not be disturbed, and this sub-clause has been amended accordingly.

In sub-clause (g), the Select Committee have omitted item (i) in the proposed sub-section (7) to section 5 because all that this provision intends to convey is that the Appellate Assistant Commissioner is subordinate to the Commissioner for the purposes of section 33A, and such a provision should more appropriately be included in the amendment to section 33A in clause 18. This has now been done.

In sub-clause (h), the Select Committee have omitted the provision prohibiting any appellate authority or court from inquiring into the nature

of the instructions issued to Income-tax officers respecting assessments to be made by them, as in their opinion, this is an undesirable restriction.

To the proposed sub-section (7C), the Select Committee have added a proviso conferring a right on the assessee to be re-heard or to have any part of the earlier proceeding re-opened if he so desires.

Clause 5.—In the opinion of the Select Committee, the President of the Tribunal should always be a judicial member and consequently the proposed sub-clause (c) has been omitted.

Clause 7.—The proposed amendment to delete the words "*bona fide*" from section 9(1) of the Act is hardly necessary and has been omitted.

Clause 8.—In the definition of "actual cost", it is now made clear that what can be deducted therefrom is any amount advanced by the Government or by any public or local authority for the purchase of such assets.

Clause 9.—The amendment is to give effect to this provision as from the date of the financial integration of Part B States with India.

Clause 10.—The Select Committee feel that the concession available under section 15C of the Act should be extended to small cottage industries also, but in view of the administrative difficulties involved in determining what is generally a new business, in the opinion of the Select Committee, the object could be achieved by suitably adapting the definition of "factory" in the Factories Act in the present context.

Clause 13.—The Select Committee have recast the proposed proviso to sub-section (5) of section 18A as, in their opinion, interest should be payable by the Government in respect of that part of the instalments paid during the year by way of advance payment of income-tax which is in excess of the tax determined on regular assessment.

In sub-clause (d), the new proviso to be inserted at the end of section 18A (6) has been re-drafted because, as it stood, it appeared to be in the nature of an inducement to the assessee not to contest the assessment.

Clause 14.—In the opinion of the Select Committee, the information asked for by an Income-tax Officer should be limited to the purposes of section 22, and where a wealth-statement is required it should be asked for only with the previous approval of the Commissioner. The provisions of sub clause (b) have therefore been redrafted accordingly, and incidentally, the first half of that sub-clause which is unnecessary has been omitted.

Clause 16.—There is no justification for taking away the right of appeal which now exists from an order of an Inspecting Assistant Commissioner exercising the powers of an Income-tax Officer to the Commissioner and, therefore, the Select Committee have omitted both sub-clause (a) of this clause and clause 17. The subsequent clauses have been re-numbered accordingly.

Clause 17 (old clause 18).—The addition of the *Explanation* is for the reasons given against sub-clause (g) of clause 4.

Clause 18 (old clause 19).—Certain consequential alterations which should have been made on the commencement of the Constitution by the

Adaptation of Laws Order are now being made. The substitution of the word "section" for "sub section" is to make it clear that the waiver of the time-limit is not only for the completion of the assessment but also for the initiation of assessment proceedings.

Clause 19 (old clause 20).—The proposed sub-section (7) is complimentary to the proposed sub-sections (5) and (6).

Clause 20 (old clause 21).—The amendments are designed to eliminate hardship to assessees by reason of retention of books of account and documents by an Income-tax Officer for unduly long periods.

Clause 22 (old clause 23).—The Select Committee think that no criminal liability need be imposed on the owner or the charterer of a ship as proposed in section 46A(2), and therefore the last few words of that sub-section have been omitted. The Select Committee also feel that the Income-tax Officer should be vested with a discretion to determine whether the whole or only a part of the tax should be recovered in the circumstances of the case.

Clause 24 (old clause 25).—Apart from a clarificatory amendment in the proposed section 49D(2), *Explanation* (iii), the other amendment is to remove one source of hardship. Generally, the excess profits tax or the business profits tax would be allowed as a deduction in the foreign country in determining the income liable to income-tax in that country, but not so in India. Therefore, if the tax were not taken into account the combined relief on income liable to tax in India and in the foreign country would not be adequate.

Clause 26 (old clause 27).—The proposed clause (a) of section 54(3) does not really expand the scope of the existing clause. The Select Committee also feel that the words "in connection with income-tax proceedings" in clause (gg) of section 54(3) should not be omitted because the misconduct complained of must necessarily be in connection with income-tax proceedings Necessary amendments have therefore been made

Old Clause 31.—This clause has been omitted, as in the opinion of the Select Committee, the bar to jurisdiction in section 67 of the Act is sufficient for the time being.

Clause 30 (old clause 32).—The amendment to clause (d) of the proviso is to equate the management expenses permissible in respect of renewal premiums for purposes of income-tax with the management expenses permissible under the Insurance Act This will enable new companies with small business to get a higher percentage than older companies.

Clause 31 (old clause 34).—The amendment makes it clear that this clause is really intended to validate assessments made or to be made under section 34 for the years prior to 1st April, 1948, where proceedings in respect thereof were commenced after the date of the amending Act.

2. The Bill was published in Part II, Section 2 of the Gazette of India, dated the 31st May, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

THAKUR DAS BHARGAVA,

Chairman of the Select Committee.

NEW DELHI;

The 7th November, 1952.

MINUTES OF DISSENT

I

The Bill, as it emerges from the Select Committee, continues the subordination of the Income-tax judiciary to the Income-tax executive. The Appellate Assistant Commissioners are officers of the department and are subordinate to the Central Board of Revenue for leave, transfer and promotion. This puts them for all practical purposes under the Commissioner of Income-tax, as Central Board of Revenue would naturally have to act on the advice and recommendation of the Commissioner. In these circumstances, in hearing appeals against the department, the Appellate Assistant Commissioners are not in a position to exercise independent judgement. Even as a judge, he is considered by the department to be so much a party that the department (except in rare cases) does not consider it necessary for the Income-tax Officer or any departmental representative to appear at the hearing of the appeals before Appellate Assistant Commissioners to support the Income-tax Officers' assessment orders. This may be contrasted with the procedure before the Appellate Tribunal where the departmental case is invariably represented by the Departmental Representative. The Appellate Assistant Commissioner who is the judge is considered adequate to represent the department—an unusual responsibility for a judge to undertake. The party really becomes a judge in his own cause. This is a perversion of judicial procedure and is against all cardinal principles of administration of justice. I am strongly of opinion that the correct procedure should always be followed—and this no less in cases where the Government is a party and Government revenue is concerned—by the separation of Income-tax judiciary from the Income-tax executive. There should be a permanent separate Income-tax judicial cadre.

The Income-tax Investigation Commission (with two eminent judges—Sir Srinivasa Varadachariar, *Ex*-judge, Federal Court and Hon'ble Mr. Justice Rajadhyaksha on it) at p.141-42 of their Report observed: "There was some ground for misgivings that the Appellate Assistant Commissioners might be anxious to please the executive heads of the department and their decisions in appeals might, to some extent, be influenced by this consideration. We accordingly asked (Question No. 57) for the views of the public on a proposal that Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and placed under the control of the Ministry of Law. Opinion was practically unanimous that the Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue." The Report goes on

to say: "We have no reason to think that Appellate Assistant Commissioners have not been impartial in the discharge of their duties or that the independence of their judgement is vitiated by any consideration irrelevant to the decision of the appeal" The use of the double negative instead of a positive statement is significant. The Report further goes on: "But on the principle that not only should justice be done but that it should appear to be done and should inspire confidence in the persons concerned, we think that the present system requires alteration. We think Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal. Their leave, transfer and posting should be in the hands of the Tribunal"

Steps should be taken, as early as practicable, to give effect to this unequivocal recommendation of the Income-tax Investigation Commission.

An amendment was proposed, in the Select Committee to clause 4(g) of the Bill referred to them, that the Appellate Assistant Commissioners should be under "the Appellate Tribunal of Income-tax" instead of being under "the Commissioner of Income-tax" but it was rejected by the majority Hence I am forced to submit this Dissenting Minute to the Report of the Select Committee on the Indian Income-tax (Amendment) Bill, 1952

A. K. BASU

NEW DELHI;

The 7th November, 1952.

II

Clause 3 (*b*) (*i*).

This clause seeks to delete clauses (i) and (ia) in sub-section (3) of Section 4 of the principal Act and substitutes certain provisions as mentioned in the said clause 3(b) (i). This amendment will nullify the decision of the Lahore High Court in the case *Charitable Gadodia Swadeshi Stores*—v.—*Commissioner of Income-Tax, Punjab*, 1944 (12) *ITR* 385. The Division Bench of that High Court held that the word "property" as used in Section 4(3) (i) of the Income Tax Act does not bear a restricted meaning but includes securities or business or share in a business. Income from business carried on by charitable or religious trusts was, therefore, exempt under clause (i).

In the *Gadodia* case the author of a trust handed to the trustees a lac of rupees. Under the deed of trust the income of the trust was to be spent for charitable or religious purposes. A part of the trust fund had been utilised for the purchase of a Swadeshi Store. It was held that the income derived by the trustees from the business of the trust was exempt from assessment of income-tax under section 4(3) (i) of Income-tax Act.

assessment It would not be proper to narrow down the scope of clause (i) then such income from business of the trust will no longer be exempt from assessment. It would not be proper to narrow down the scope of clause (i) by making Section 4(3) (ia) a proviso to Section 4(3) (i).

Clause 4(g).

This clause wanted to delete sub-section (7) of Section 5 of the principal Act and to substitute the following clause:—

"(7) For the purposes of this Act,—

(i) Appellate Assistant Commissioners of Income-tax shall be subordinate to the Commissioner of Income-tax within whose jurisdiction they perform their functions; but no orders, instructions or directions shall be given to them so as to interfere with their discretion in the exercise of their appellate functions;

(ii) Inspecting Assistant Commissioners shall be subordinate to the Director of Inspection, and to the Commissioner of Income-Tax within whose jurisdiction they perform their functions;

(iii) Income-tax Officers shall be subordinate to the Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-Tax within whose jurisdiction they perform their functions."

An amendment was moved by Shri Tulsidas Kilachand to the effect that item (g) sub-clause (i) of the proposed sub-section (7) of section 5 be not omitted and in the original clause instead of words "to the Commissioner of Income Tax", the words "to the Appellate Tribunal of Income-tax" may be substituted.

This amendment was perfectly relevant to the Bill as introduced in the House and as it stood when it was referred to the Select Committee. The Chairman of the Select Committee did not rule out the amendment as out of order but left it to the Committee to decide whether the amendment was relevant to the clause. It was held by a majority of the Committee that the amendment was not relevant to the clause. It is submitted that the majority was wrong in taking that view. The amendment was relevant and should have been considered on the merits.

It was not proper for the Select Committee to turn down the recommendation of the Income-Tax Investigation Commission on this subject. The Bill was primarily meant to implement the recommendations of that Commission which was presided over by Shri Vardachariar, former Chief Justice of the Federal Court and included Mr. Justice Rajadhyaksha. The Investigation Commission definitely recommended that the Appellate Assistant commissioners should be removed from the control of the Central Board of Revenue and that they should be placed under the Appellate Tribunal. The Commission further recommended that their leave, transfers and postings should be in the hands of the Tribunal. The relevant portion of the Report of the Investigation Commission on this point is quoted below:—

Para 319 at pages 142-3 of the Report:—

"319. Prior to 1939, there were not, as at present, two sets of Assistant Commissioners and a large part of the work of Assistant Commissioners, consisted of hearing appeals against the decisions of Income-Tax Officers. They had also to supervise the work of Income Tax Officers. As a result of the recommendations of the Ayers' Committee, the Appellate and Supervisory functions were bifurcated and each was entrusted to separate sets of Assistant Commissioners. Although this step was one in the right direction and gave a sense of reality to the appeals heard by the Assistant

Commissioners who were expected to be absolutely free to give their unfettered decisions, it seems to us that the experiment then begun should be carried forward to its logical conclusion; otherwise the scheme would only amount to a half-hearted attempt to remove the influence of the executive as long as Appellate Assistant Commissioners continue to be subordinate to the Central Board of Revenue. Although under the proviso to sub-section (8) of Section 5, no orders, instructions or directions can be given so as to interfere with the discretion of Appellate Assistant Commissioners in the exercise of their Appellate functions, the public will be slow to give them credit for independence and impartiality. We have no reason to think that Appellate Assistant Commissioners have not been impartial in the discharge of their duties or that the independence of their judgment is vitiated by any considerations irrelevant to the decision of the appeal. But on the principle that not only should justice be done but that it should appear to be done and should inspire confidence in the persons concerned, we think that the present system requires alteration. We think that the experiment begun in 1939 should be carried forward and Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal. Their leave, transfer and posting should be in the hands of the Tribunal."

The recommendations of an experienced body like the Investigation Commission should not have been turned down in the manner in which it has been done. It is not correct to suggest, as was done later in a Note prepared by the Department, that the Commission recommended the transfer of the Appellate Assistant Commissioners to the control of the Tribunal "solely on the sentiment that justice should not only be done but should seem to be done." It is amazing that the recommendations of the Investigation Commission have been reviewed by their successors and the latter have gone to the length of suggesting that the learned Judges who composed the Commission had not adequate knowledge of the working of the Department. This is an extraordinary procedure and it is regrettable that this procedure should have been adopted by persons occupying responsible positions. In fairness to the Income-Tax Investigation Commission it should be pointed out that the learned members of the Commission submitted a very thoughtful and detailed Report consisting of 448 paragraphs and they acted fully in accordance with the terms of reference contained in the Taxation on Income (Investigation Commission) Act (XXX of 1947). It is also to be noted that not only an *ex*-Judge of the Federal Court and a Judge of a High Court were members of that Commission but a very experienced and able Officer of the Department who had thorough knowledge of its working was also associated with them as a member, namely, Mr. V. D Mazumdar. The report of the Commission was also signed by him.

There may be administrative difficulties but they are meant to be overcome if the principle is sound. The recommendation of the Investigation Commission should not be brushed aside lightly. It is difficult for Assistant Appellate Commissioners to discharge their duties with that impartiality and independence which should be expected from Appellate officers in as much as their future depends upon the revenue authorities. Naturally they are placed in an awkward position. The cardinal principle of justice demands that they should be placed under the Appellate Tribunal. For decades the Indian National Congress and every organisation in this

country have demanded the separation of the executive from the judiciary and that has been recognised as a salutary principle in the administration of justice. If the recommendations of the Investigation Commission are implemented then the machinery will inspire the full measure of confidence of the general public. It is also essential in the interest of public revenue. It is of fundamental importance that "justice should not only be done but should manifestly and undoubtedly be seen to be done" (per Lord Hewart in Rex-v-Sussex Justices (1924) 1 KB 256 at page 259).

Clause (6)

This clause seems to be exempt from tax "death-*cum*-retirement gratuity" under the revised pension rules of the Central Government or any similar scheme of the Central Government. This is a desirable amendment. But the relief should not be restricted to payments covered by pension rules of the Central Government or of a State Government. In all fairness it should be extended to gratuity payments made by private employers. To enact a provision like this may be tantamount to discrimination contrary to Article 14 of the Constitution.

Clause 8(b)

The explanation should be deleted because depreciation on the original cost of the asset is allowed so that the assessee might be able to replace the asset depreciated. If the explanation is retained the accumulated depreciation fund will not be sufficient to replace the capital asset. It may adversely affect a number of displaced persons who have set up small industries with the help of grants from Government. Such refugees will not be able to rebuild or replace the machinery after it is worn out.

Clause 12 (c)

It will not be fair to make the employee pay the tax over again for the default of the employer who had already deducted the tax at the source.

Clause 13 (c)

On advance payments of tax interest at 2% per annum was allowed. This should not be dropped The Investigation Commission has recommended that the rate of 2% should be increased.

Clause 23

This clause seeks to introduce a new Section 46A in Act XI of 1922 which requires any person who is not domiciled in India or, who even if domiciled in India has no intention of returning to India, to obtain a tax clearance certificate before actually leaving the country. It is extremely desirable that *bona fide* Indian Tax-payers should not be subjected to harassment and inconvenience because Pakistan has enacted a law of this character and has been subjecting non-Muslims to all sorts of difficulties and impediments. The Pakistan law on the subject is as follows :—

"Copy of Section 14 (i) of Pakistan Income Tax Act.

44G. Persons leaving Pakistan to obtain certificates.—

1 Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in Pakistan shall leave any Province of Pakistan either by land, sea or air unless he first obtains from the

competent authority a taxation certificate stating that he has no liabilities under this Act or under the Business Profits Tax Act, 1947, or that satisfactory arrangements have been made for the payment of all such taxes which are or may become payable by that person:

Provided that if the competent authority is satisfied that such person intends to return to Pakistan he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within a specified period.

2. If the owner or charterer of any ship or aircraft carrying persons from any place in a Province of Pakistan issues an authority to travel by such ship or aircraft to any person to whom sub-section (1) applies without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be liable to pay the amount, of tax, if any, which has or may become due and payable by such person and shall also be punishable with fine which may extend to two thousand rupees.

Explanation:—

For the purposes of this sub-section the expressions "owner" and "charterer" include any representative, agent or employee who may be empowered by the owner or charterer to issue an authority to travel by the ship or aircraft.

(3) The Central Government may make rules under this section prescribing the competent authority mentioned in sub-section (1) and regulating any other matter necessary for or incidental to the purpose of carrying out the provisions of this section".

The proposed Section 46A should be confined to persons not domiciled in India who want to leave any State of India.

It is also recommended that sub-section (2) of 46A should be suitably amended so that an Airways Company or a Steamer Company should not be made liable to pay the entire amount of tax which an assessee ought to have paid. Powers should be given to the Court to inflict fine in proper cases not exceeding the amount of the tax.

Clause 34

This clause is meant to negative a Judgment of the Calcutta High Court and seeks to validate notices issued under the existing Section 34 as amended in 1948. It is to be seriously considered how far retrospective effect should be given to provisions of this character. It would be advisable to wait till the judgment of the Supreme Court of India is delivered in the Calcutta case.

N. C. CHATTERJEE.

NEW DELHI;
The 7th November, 1952.

III

I agree with the above minute of dissent given by Shri N. C. Chatterjee.

TULSIDAS KILACHAND.

NEW DELHI,
The 7th November, 1952.

IV.

I agree with the minute of dissent given by Shri N. C. Chatterjee with regard to clause 4(g), clause 6 and clause 23 of the Bill.

DAMODARA MENON.

NEW DELHI,
The 7th November, 1952.

V.

We do not agree with the majority view of the Select Committee that the President of the Income-tax Appellate Tribunal should necessarily be a judicial member. We are of the opinion that as proposed in the Bill the present invidious distinction between judicial and accountant members should be abolished. Once in the Tribunal, they all hold the same position and perform the same functions in the matter of deciding appeals and making references to the High Courts. A judicial member as such is not better qualified for discharging the more or less administrative functions which are vested in the President. An accountant member is equally well qualified to perform them and it does not seem equitable to debar him from presidentship.

R. R. MORARKA.
S. L. DHUSIYA.
P. NATESAN.

NEW DELHI,
The 7th November, 1952

VI

Clause 4H contain the following:

"and the question whether any and if so what instructions were issued shall not be enquired into by any Appellate Authority under this Act or by any Court": The Select Committee have omitted this provision as in its opinion these words constituted an undesirable restrictions on the powers of the Appellate Authority or the Court as the case may be. I am, however, sorry that the Select Committee failed to fully appreciate the significance of the preceding provisions in this Sub-clause. The first three letters of this sub-clause read as follows:—

> "The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income Tax Officer subordinate to him in the matter of any assessment".

There is no objection to the issue of any general instructions a copy of which may be placed on the file and which may be available to every assessee. The Appellate Authority can also easily take note of such

instruction but these words sanction and authorise the issue of any secret instructions in respect of individual assessees to the Income Tax Officer. These instructions may even be oral or even if they are in writing, the assessee need not necessarily be apprised of their existence, and the Appellate Authority also may never come to know about them.

The most fundamental canon of justice is before you pass any order against any person, you must first apprise him of the facts and then hear what he has to say in his defence. This fundamental axiom of justice is violated by the issue of such instructions at the back of the assessee who may not even know the ground or background of the issue of such instructions in his case It has been said that such instructions sometimes favour the assessee.

It may be so in some cases but it is not rare to find that instructions to the detriment of the assessees are given by higher officers specially Inspecting Assistant Commissioners to the Income Tax Officers without the assessees ever coming to know that the Income Tax Officer's judgment was an inspired one. In fact it is a misnomer to call such an inspired judgment as the judgment of the Income Tax Officer. The assessee in such a case feels as if he has been stabbed from behind by some individual and he can never get confidence in the rightness of the decision of the Income Tax Authorities Such a course is also unfair to the Income Tax Officer who loses his initiative and finds his intellect mortgaged to some higher officer In cases when he does not agree with the point of view of his superior officer and he has to perforce pass an order against his will I think no oral instructions should be allowed to be given in the case of individual and every instruction to the detriment of the assessee must be put on record in black and white It is simply revolting to find that the assessee is not brought face to face with the Inspecting Assistant Commissioner and he is not afforded an opportunity to explain circumstances which weigh against him in the mind of the Inspecting Assistant Commissioner or some higher officer. One's sense of fairplay and justice is not satisfied when one has to countenance a state of things in which orders can be passed without hearing the person against whom these orders are made in secret and behind his back. Many complaints are made by unknown people against the assessees and enquiries are also made without the assessee knowing anything about them If the assessee is not told about these and the higher officials or Assistant Inspecting Commissioners get impressions about particular assessees without giving the assessee any chance of removing them nothing but injustice may result in many cases. It is, therefore in my opinion absolutely necessary to create confidence among the people that it should be ruled that no order to the detriment of any assessee should be passed as a result of instructions or otherwise by the higher officers unless they are pleased to hear the assessee and no Income Tax Officer should give effect to any such secret instruction unless he affords an opportunity to the assessee to hear what he has to say In proper cases he can take the statements of the assessee and send the same to the higher officials for consideration. The assessee cannot even urge in appeal anything against such secret instruction as he is not supposed to be apprised of them. This kind of ghost assessment is not only unjustifiable and annoying but is extremely unjust and should not be countenanced Therefore, the rule should be changed and it must be insisted that the assessee is apprised of such instructions and is heard about them.

II

The Investigation Commission had recommended that the Appellate Assistant Commissioner should not be subordinate to the C.B.R. so far as the promotions, transfers etc. are concerned. I also submitted many a time in the House that this reform was an overdue one and should be implemented as soon as possible. It was expected that the Government will give effect to this recommendation as it was calculated to inspire confidence in the general public and in the words of the Commission not only calculated to do justice but to make it appear that justice was done. This point was raised by several members of the Select Committee but unfortunately this matter could not be gone into as the particular section of the Income Tax Act in which the "direct control" by the C.B R. was specifically mentioned was not sought to be amended. The principle of separation of the judiciary from the executive is an accepted one. There might be some administrative difficulties but no reform of any kind is possible unless such difficulties are attempted to be overcome. It is regretted that the Ministry did not agree with the desirability of implementing this reform at once but it is not too much to hope that whenever in future the Income Tax Act is sought to be amended, Ministry will be pleased to give effect to this reform. It appears that the Investigation Commission and the Government are themselves very keen that the Appellate Assistant Commissioners may act with impartiality and they take pains in showing by figures that they do act impartially. There is no reason why this oft repeated demand supported as it is by the recommendation of the Investigation Commission should not be met as soon as possible. I would request the Government to take early steps to have the way for such reform and mould its future policy in such a manner that the administrative difficulties if any may disappear and no adverse consequences may follow when the Government are pleased to give effect to this reform. I must, however, submit that like justice, reforms delayed are reforms denied. Early steps should be taken to bring about this reform.

III

The Select Committee decided not to omit the word judicial from subsection IV of Section 5A of the principal Act. In my humble opinion as between Accountant Members and judicial members there should be no distinction so far as the post of the President of the Tribunal is concerned. It is invidious to make a distinction to this nature between judges who exercise the same powers and functions so far as the actual cases go. This point was considered at length by the Select Committee and it was brought to our notice that many of the Accountant Members of the Tribunal have a much longer standing to their credit than the judicial members and yet these accountant members have no chance of holding a post of President simply because they are accountant members. I fail to see why any inferiority should attach to any accountant member simply because he is an accountant member. I would, therefore, like that the amendment for deletion of word judicial from sub-section IV should be accepted.

NEW DELHI. THAKUR DAS BHARGAVA.

The 7th November, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*)

BILL NO. 38 OF 1952

A Bill further to amend the Indian Income-tax Act, 1922

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Indian Income tax (Amendment) Act, 1952.

(*2*) Subject to any special provision made in this behalf in this Act, it shall be deemed to have come into force on the 1st day of April, 1952.

2. Amendment of section 2, Act XI of 1922.—In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the principal Act),—

(*a*) for clause (*2*), the following clause shall be substituted, namely:—

"(*2*) 'assessee' means a person by whom income-tax * * * or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him;";

(*b*) clause (*6*) shall be renumbered as clause (*5A*), and after clause (*5A*) as so renumbered, the following clause shall be inserted, namely:—

"(*6*) 'Director of Inspection' means a person appointed to be a Director of Inspection under section 5, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection;";

(*c*) after clause (*6D*), the following clause shall inserted, namely:—

"(*6E*) 'Inspector of Income-tax' means a person appointed to be an Inspector of Income-tax under section 5;";

(*d*) for clause (*11*), the following clause shall be substituted, namely:—

"(*11*) 'previous year' means—

(*i*) in respect of any separate source of income, profits and gains—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have

been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the assessee, the year ending on the date to which his accounts have been so made up:

Provided that where in respect of a particular source of income, profits and gains an assessee has once been assessed, or where in respect of a business, profession or vocation newly set up an assessee has exercised the option under sub-clause (*c*), he shall not, in respect of that source or, as the case may be, business, profession or vocation exercise the option given by this sub-clause so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose: or

(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf; or

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (*b*), or, if the accounts of the assessee are made up in respect of a period not exceeding twelve months from the date of the setting up of the business, profession or vocation and the case is not one for which a period has been determined under sub-clause (*b*), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to the date to which his accounts have been so made up:

Provided that when the date to which the accounts have been so made up does not fall between the setting up of the business, profession or vocation and the next following 31st day of March inclusive, it shall be deemed that there is no previous year for the said assessment year and the previous year which would otherwise have been determined according to the option exercised by the assessee shall be deemed to be the previous year for the next succeeding assessment year;

(*ii*) in respect of the share of the income, profits and gains of a firm where the assessee is a partner in the firm and the firm has been assessed as such, the period as determined for the assessment of the income, profits and gains of the firm;".

3. Amendment of section 4, Act XI of 1922.—(*1*) In section 4 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after the third proviso, the following further provisos shall be inserted, namely:—

"Provided further that, in the case of a person who was not resident in the taxable territories in two out of the three years immediately preceding the previous year, so much of the income, profits and gains referred to in sub-clause (*iii*) of clause (*b*) as accrued or arose to him without India, shall not be included in his total income chargeable in any year subsequent to the year ending on the 31st day of March, 1951, whether his assessment for that year has or has not been completed before the commencement of the Indian Income-tax (Amendment) Act, 1952:

Provided further that, in the case of a person resident in the taxable territories to whom the preceding proviso of paragraph 8 of the Part B States (Taxation Concessions) Order, 1950, does not apply, so much of the income, profits and gains referred to in sub-section (*iii*) of clause (*b*) as accrued or arose to him without India and were not chargeable under this Act, unless brought into or received in the taxable territories, shall not be included in his total income if—

(*i*) such income, profits and gains are brought into or received in the taxable territories after the 2nd day of September, 1951, and before the 1st day of April, 1954;

(*ii*) half of the amount of such income, profits and gains is invested, within three months of the receipt thereof in the taxable territories, in securities of the Central Government or of a State Government purchased through the Reserve Bank of India and kept with the said Bank for custody for a minimum period of two years; and

(*iii*) * * * * the amount of any income-tax, interest or penalty or any other sum due from such person under this Act on the date of receipt of such income, profits and gains in the taxable territories is paid within the said three months.";

(*ii*) In *Explanation 2*, the following words shall be added at the end, namely:—

"but any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in the taxable territories, if the pension is payable to a person referred to in article 314 of the Constitution or to a person, who, having been appointed before the 15th August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India."

(*b*) in sub-section (*3*),—

(*i*) for clauses (*i*) and (*ia*), the following clause shall be substituted, namely:—

"(*i*) Subject to the provisions of clause (*c*) of sub-section (*1*) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of a property so held in part only for such purposes, the income applied or finally set apart for application thereto:

Provided that such income shall be included in the total income—

(*a*) if it is applied to religious or charitable purposes without the taxable territories, but the Central Board of Revenue may, in the case of a property held under trust or other legal obligation created before the commencement of the Indian Income-tax (Amendment) Act, 1952, the income wherefrom is so applied, by general or special order, direct that it shall not be included in the total income;

(*b*) in the case of income derived from a business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either—

(*i*) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or

(*ii*) the work in connection with the business is mainly carried on by the beneficiaries of the institution;

(*c*) if it is applied to purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application thereto in which case it shall be deemed to be the income of the year in which it is so applied or ceases to be so accumulated or set apart;

(*ii*) in clause (*xii*), for the figures "1952" the figures "1954" shall be substituted,

(*iii*) after clause (*xiii*), the following clauses shall be inserted, namely:—

"(*xiv*) Any income received by an employee of a foreign enterprise, not engaged in any trade or business in the taxable territories, as remuneration for services rendered by him during the course of his stay in the taxable territories, where such stay does not exceed in the aggregate a period of ninety days in any year and where such remuneration is not liable to be deducted from the income, profits and gains chargeable under this Act.

(*xv*) Any income received as remuneration, whether directly or indirectly, from the Government of a foreign State by any person who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of that foreign State (the terms whereof provide for the exemption given by this clause) and any other income of such person or of the members of his family accompanying him to India, which accrues or arises without the taxable territories, and is not deemed to accrue or arise in the taxable territories, upon which such person or the members of his family are required to pay any income or social security tax to the Government of that foreign State.

(*xvi*) Any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development, or by any industrial undertaking or financial corporation in India under a loan agreement with the said Bank which is guaranteed by the Central Government, except where the holder of such bond is a person resident in the taxable territories.

(*xvii*) Interest on the 3½ per cent. The Year Treasury Savings Deposit Certificates issued by or under the authority of the Central Government for an amount not exceeding the maximum amount which an assessee is entitled to deposit in such certificates.

(*xviii*) Interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949.

(*xix*) Any daily allowance received by * * * any person, * * * by reason of his membership of the Dominion Legislature or of the Constituent Assembly or of Parliament or of any Provincial or State Legislature or of any Committee thereof."

(*c*) in the last paragraph, in the definition of "charitable purpose", the word, letters and brackets "clause (*ia*)" shall be omitted, and for the words "income of a private religious trust" the words "income from property held under a trust or other legal obligation for private religious purposes' shall be substituted.

(2) The amendments made by sub-clause (*iii*) of clause (*b*) of sub-section (*1*) shall be deemed to be operative in relation to all assessments for any year whether such assessments have or have not been completed before the commencement of the Indian Income-tax (Amendment) Act, 1952

4. Amendment of section 5, Act XI of 1922.—In section 5 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) Directors of Inspection.";

(*u*) after clause (*d*), the following clause shall be inserted, namely —

"(*e*) Inspectors of Income-tax.";

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The Central Government may appoint as many Directors of Inspection as it thinks fit, and Directors of Inspection shall, subject to the control of the Central Board of Revenue, perform such functions of any other Income-tax authority as may be assigned to them by the Central Government.";

(*c*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The Central Government may appoint as many Commissioners of Income-tax as it thinks fit and they shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Central Board of Revenue may direct, and where such directions have assigned to two or more Commissioners of Income-tax the same area or the same persons or classes of persons or the same income or classes of incomes or the same cases or classes of cases, they shall have concurrent jurisdiction subject to any orders which the Central Board of Revenue may make for the distribution and allocation of work to be performed.";

(*d*) for sub-section (*3*), the following sub-sections shall be substituted, namely:—

"(*3*) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I service as it thinks fit, and the Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II service and Inspectors of Income-tax as may, from time to time, be sanctioned by the Central Government.

(*3A*) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.";

(*e*) in the second sentence of sub-section (*5*), the words "with the previous approval of the Central Board of Revenue" shall be omitted;

* * * * *

(*f*) after sub-section (*5*), the following sub-section shall be inserted, namely:—

"(*5A*) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other income-tax authority under whom they are appointed to work, and shall be subordinate to such officer or authority.";

(*g*) for sub-section (*7*), the following sub-section shall be substituted, namely:—

"(*7*) For the purposes of this Act,—

* * * * *

(*i*) Inspecting Assistant Commissioners shall be subordinate to the Director of Inspection and to the Commissioner of Income-tax within whose jurisdiction they perform their functions;

(*ii*) Income-tax Officers shall be subordinate to the Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-tax within whose jurisdiction they perform their functions."

(*h*) after sub-section (*7A*), the following sub-sections shall be inserted, namely:—

"(*7B*) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income-tax Officer has under this Act in relation to the making of inquiries.* * * *

(*7C*) Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be re-heard.

5. Amendment of section 5A, Act XI of 1922.—In section 5A of the principal Act,—

(*a*) in sub-section (*2*), the proviso shall be omitted;

(*b*) in sub-section (*3*), for the words beginning with "A judicial member shall be" and ending with the words and figures "the Auditors Certificates Rules, 1932:", the following shall be substituted, namely:—

"A judicial member shall be a person who has for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant:";

* * * * *

8. Amendment of section 7, Act XI of 1922.—In sub-section (*1*) of section 7 of the principal Act, in the proviso to *Explanation 2*, after the words "liable to income-tax any payment" the words "of death *cum* retirement

gratuity received after the 16th day of April, 1950, under the revised Pension Rules of the Central Government or under any similar scheme of a State Government or any payment" shall be inserted.

7. Amendment of section 9, Act XI of 1922.—(*1*) In section 9 of the principal Act,—

(*a*) in sub-section (*1*), * * * after clause (*ii*), the following proviso shall be inserted, namely:—

"Provided that for the purposes of making any assessment for the year ending on the 31st day of March, 1952, in respect of the property situated in an area affected by the Assam earthquake of 1950, the allowance on account of repairs referred to in clauses (*i*) and (*ii*) shall be increased up to a maximum of one half of the annual value thereof or the amount of expenditure proved to have been actually incurred for repairs, whichever is the less";

(*b*) for the first proviso to sub-section (*2*), the following proviso shall be substituted, namely:—

"Provided that, where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall be determined in the same manner as if the property had been let to a tenant, so however that, where the sum so determined exceeds ten per cent. of the total income of the owner, the annual value of the property shall be deemed to be ten per cent. of such total income".

(*2*) The amendments made by * * * * * clause (*a*) of sub-section (*1*) shall be deemed to be operative for any assessment for the year ending on the 31st day of March, 1952, whether made before or after the commencement of this Act, and where any such assessment has been made before such commencement it shall be lawful for the Income-tax Officer to revise it, wherever necessary, to give effect to this amendment.

8. Amendment of section 10, Act XI of 1922.—In section 10 of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) in sub-clause (*a*) of clause (*vi*), for the figures "1952", the figures "1954" shall be substituted, and in clause (*b*) of the proviso to that clause, for the words "where full" the words "where, in the assessment of the assessee or if the assessee is a registered firm, in the assessment of its partners, full" shall be substituted;

(*ii*) in clause (*via*), for the words and figures "in the assessments for each of the five years commencing on the 1st day of April, 1949, and ending with the 31st day of March, 1954", the words and figures "in not more than five successive assessments for the financial years next following the previous year in which such buildings are erected and such machinery and plant installed and falling within the period commencing on the 1st day of April, 1949, and ending on the 31st day of March, 1959" shall be substituted, and in the proviso to that clause, for the words and figures "on the 31st day of March, 1953" the words "on the 31st day of March immediately preceding the last financial year in which the

further sum referred to in this clause is admissible" and for the words "in the assessment for the year commencing next after that date", the words "in the assessment for such last financial year" shall respectively be substituted;

(*iii*) in clause (*xv*), for the words and brackets "(not being in the nature of capital expenditure or personal expenses of the assessee)" the words and brackets "(not being an allowance of the nature described in any of the clauses (*i*) to (*xiv*) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee)" shall be substituted;

(*b*) in sub-section (*5*),—

(*i*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) in the case of assets acquired by the assessee by way of gift or inheritance, the 'written-down-value' as in the case of the previous owner or the market value thereof whichever is the less:" and

(*ii*) at the end, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this sub-section, the expression "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by Government or by any public or local authority, and any allowance in respect of any depreciation carried forward under clause (*b*) of the proviso to clause (*vi*) of sub-section (*2*) shall be deemed to be depreciation 'actually allowed';".

9. Amendment of section 14, Act XI of 1922.—In section 14 of the principal Act, in clause (*c*) of sub-section (*2*), for the words and letter "Part B State" the words "the State of Jammu and Kashmir" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1950.

10. Amendment of section 15C, Act XI of 1922.—In section 15C of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*ii*), for the word "three" the word "six" shall be substituted;

(*ii*) for clauses (*iii*) and (*iv*) beginning with the word "employs" and ending with the words "by human agency", the following shall be substituted, namely:—

"(*iii*) employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power."

(*b*) for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) The provisions of this section shall apply to the assessment for the financial year next following the previous year in

which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding."

11. Amendment of section 17, Act XI of 1922.—In sub-section (*1*) of section 17, after the first proviso, the following further proviso shall be inserted, namely :—

"Provided further that where any such person satisfies the Income-tax Officer that he was prevented by sufficient cause from making such declaration on the first occasion on which he became assessable and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, allow such person to make the declaration at any time after the expiry of the period specified, and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments thereafter."

12. Amendment of section 18, Act XI of 1922.—In section 18 of the principal Act,—

(*a*) in sub-section (*2B*), for the words "at the rate or rates applicable to the estimated income of the assessee under this head", the following shall be substituted, namely:—

"on the estimated income of the assessee under this head in accordance with the provisions of clause (*b*) of sub-section (*1*) of section 17:

Provided that where—

(*i*) the person not so resident has obtained a certificate in writing from the Income-tax Officer (which certificate the Income-tax Officer shall be bound to give in every proper case on the application of the assessee) stating that income-tax and super-tax may be deducted at the rates specified therein, or

(*ii*) the Income-tax Officer has, by an order in writing, required the person responsible for making payment to deduct income-tax and super-tax at the rates specified in that order,

the person responsible for making payment shall, until such certificate or order is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or order, as the case may be.";

(*b*) for sub-sections (*3A*), (*3B*), (*3C*), (*3D*) and (*3E*), the following sub sections shall be substituted, namely:—

'(*3A*) The person responsible for paying any income chargeable under the head "Interest on securities" to a person whom he has no reason to believe to be resident in the taxable territories, shall, at the time of payment, deduct super-tax on the amount of such interest—

(*i*) if such person is a company, at the rate applicable to a company.

(*ii*) if such person is not a company, in accordance with the provisions of clause (*b*) of sub-section (*1*) of section 17:

Provided that where such person is not a company, the proviso to sub-section (*2B*) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (*2B*).

(*3B*) Any person responsible for paying to a person not resident in the territories any interest not being "Interest on securities" or any other sum chargeable under the provisions of this Act shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct income-tax at the maximum rate and super-tax at the rate applicable to a company or in accordance with the provisions of sub-clause (*b*) of sub-section (*1*) of section 17, as the case may be.

Provided that where the person not resident is not a company, the proviso to sub-section (*2B*) shall apply to the deduction of income-tax and super-tax under this sub-section as it applies to the deduction of income-tax and super-tax under sub-section (*2B*):

Provided further that nothing in this section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under the first proviso to section 43 not to be an agent of the payee.

(*3C*) Where the person responsible for paying any sum chargeable under this Act other than interest, to a person not resident in the taxable territories, considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable and upon such determination tax shall be deducted therefrom by the person responsible for making such payment in accordance with the provisions of sub-section (*3B*).

(*3D*) The principal officer of an Indian company or a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from dividends shall, at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be resident in the taxable territories, deduct super-tax on the amount of such dividend as increased in accordance with the provisions of sub-section (*2*) of section 16—

(*i*) if the shareholder is a company, at the rate applicable to a company,

(*ii*) if the shareholder is a person other than a company, in accordance with the provisions of clause (*b*) of sub-section (*1*) of section 17:

Provided that in the case of a shareholder other than a company, the proviso to sub-section (*2B*) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (*2*B);

(*c*) in sub-section (*5*), after the words "Any deduction made" the words "and paid to the account of the Central Government" shall be

inserted; after the words "given to him therefor" the words "on the production of the certificate furnished under sub-section (*9*) or section 20, as the case may be," shall be inserted, and after the second proviso, the following further proviso shall be inserted, namely:—

"Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted or in respect of any sum by which the dividend has been increased under sub-section (*2*) of section 16, may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income.";

(*d*) in sub-section (*7*), for the words, brackets, figures and letters "sub-sections (*3D*) *and* (*3E*)" the word, brackets, figure and letter "sub-section (*3D*)" shall be substituted;

(*e*) in sub-section (*9*), for the brackets, figures, letters and word "(*5C*), (*3D*) or (*3E*)", the word, brackets, figure and letter "or (*3D*)" shall be substituted;

(*f*) after sub-section (*9*), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this section and section 20A, the expression 'person responsible for paying' means—

(*i*) in the case of payments of income chargeable under the head 'Salaries' other than payments by the Central Government or the Government of a State, the employer himself or if the employer is a company, the company itself including the principal officer thereof;

(*ii*) in the case of payments of income chargeable under the head, 'Interest on securities', other than payments made by or on behalf of the Central Government or the Government of a State, the local authority or company including the principal officer thereof;

(*iii*) in the case of payment of interest not being 'Interest on securities', the payer himself or if the payer is a company, the company itself including the principal officer thereof."

13. Amendment of section 18A, Act XI of 1922.—In section 18A of the Principal Act,—

(*a*) in sub-section (*1*) (*a*), for the words "if that total income exceeded six thousand rupees", the words "if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees" shall be substituted;

(*b*) in sub-section (*3*), for the words "is likely to exceed six thousand rupees," the words "is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees." shall be substituted;

(*c*) to sub-section (*5*), the following further proviso shall be added, namely:—

"Provided further that for any period beginning with the 1st day of April 1952, interest shall be payable only on the amount by which the aggregate sum of any instalments paid

during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder—

(*i*) in respect of such instalments paid in any financial year before the said date, from the said date to the date of the regular assessment ;

(*ii*) in respect of such instalments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment."

(*d*) in sub-section (*6*),—

(*i*) in the first proviso after the word "Provided", the word "further" shall be inserted and before that proviso, the following proviso shall be inserted, namely:—

"Provided that for any period after the 31st day of March, 1952, interest shall be payable at the rate of four per cent. per annum:";

(*ii*) after the last proviso, the following further proviso shall be inserted, namely:—

"Provided further that in such cases and under such circumstances as may be prescribed, the Income-tax Officer may, reduce or waive the interest payable by the assessee."

14. Amendment of section 22, Act XI of 1922.—In section 22 of the principal Act,—

(*a*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) If any person, who has not been served with a notice under sub-section (*2*) has sustained a loss of profits or gains in any year under the head 'Profits and gains of business, profession or vocation', and such loss or any part thereof would ordinarily have been carried forward under sub-section (*2*) of section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (*1*) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (*1*) had his income exceeded the maximum amount not liable to income tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (*1*).";

(*b*) in sub-section (*4*), after the words "such accounts or documents as the Income-tax Officer may require" the following shall be inserted, namely :—

"* * * or to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including with the previous approval of the Commissioner, a statement of all assets and liabilities not included in the accounts) as the Income-tax Officer may require for the purposes of this section:".

15. Amendment of section 24, Act XI of 1922.—In section 24 of the principal Act,—

(*a*) in sub-section (*1*), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that in computing the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head, so much of any loss of profits and gains as would but for the loss have accrued or arisen within the State of Jammu and Kashmir, shall not be taken into account except to the extent of the amount of income, profits and gains, if any, which would be exempt under the provisions of clause (*c*) of sub-section (*2*) of section 14.";

(*b*) in sub-section (*2*).—

(*i*) for the words "under the head 'Profits and gains of business, profession or vocation'," the words "in any business, profession or vocation" shall be substituted;

(*ii*) for clause (*a*) of the proviso, the following clause shall be substituted, namely:—

"(*a*) where the loss sustained is in any business, profession or vocation, so much of such loss as is referred to in the first proviso to sub-section (*1*) shall not be set off except against the profits and gains accruing or arising in the State of Jammu and Kashmir from the same business, profession or vocation and exempt from tax under the provisions of clause (*c*) of sub-section (*2*) of section 14."

16. Amendment of section 30, Act XI of 1922.—In section 30 of the principal Act, * * * in sub-section (*1A*), the brackets, figures, letters and word "(*3A*)' and "or (*3C*)" shall be omitted.

* * * * *

17. Amendment of section 33A, Act XI of 1922.—In section 33A of the principal Act,—

(*i*) in sub-section (*2*), after the words "made within one year from the date of the order" the words and brackets "(or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period)" shall be inserted; and

(*ii*) after sub-section (*2*), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of sub-sections (*1*) and (*2*), the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner."

18. Amendment of section 34, Act XI of 1922.—In section 34 of the principal Act,—

(*a*) in the proviso to sub-section (*2*), the words "of the High Court or of the Privy Council" shall be omitted;

(*b*) in the second proviso to sub-section (*3*) for the word 'sub-section', the word 'section' shall be substituted, and for the words

"in pursuance of", the words "to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in" shall be substituted.

19. Amendment of section 35, Act XI of 1922.—In section 35 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or re-assessment of the firm or on any reduction or enhancement made in the income of the firm under section 31, section 33, section 33A, section 33B, section 66 or section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm.

(6) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or where any excess profits tax or business profits tax has been assessed after the completion of the corresponding assessment for income-tax [whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1952], and in consequence thereof it is necessary to re-compute the total income of the assessee chargeable to income-tax, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply accordingly, the period of four years referred to in that sub-section being computed from the date of the order making or modifying the assessment of such excess profits tax or business profits tax.

Explanation.—For the purposes of sub-section (6), where the assessee is a firm, the provisions of sub-section (5) shall also apply as they apply to the rectification of the assessment of the partners of the firm."

(7) Where the assessment of a company in whose case an order under section 23A has been made is modified in appeal, revision or any other proceeding or the order under section 23A is cancelled, or varied, and in consequence thereof it is necessary to re-compute the total income of the shareholders, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the company.

20. Amendment of section 37, Act XI of 1922.—Section 37 of the principal Act shall be numbered as sub-section (1) of that section, and

after sub-section (*1*) as so numbered, the following sub-section shall be inserted, namely :—

"(*2*) Subject to any rules made in this behalf, any authority referred to in sub-section (*1*) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Income-tax Officer shall not—

(*a*) impound any books of account or other documents without recording his reasons for so doing ; or

(*b*) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor."

21. Amendment of section 46, Act XI of 1922.—In sub-section (*7*) of section 46 of the principal Act, for the proviso, the following provisos and *Explanation* shall be substituted, namely:—

"Provided that the period of one year herein referred to shall—

(*i*) where an assessee has been treated as not being in default under section 45 as long as his appeal is undisposed of, be reckoned from the date on which the appeal is disposed of;

(*ii*) where recovery proceedings in any case have been stayed by any order of a court, be reckoned from the date from which the order is withdrawn;

(*iii*) where the date of payment of tax has been extended by an income-tax authority, be reckoned from the date up to which the time for payment had been extended;

(*iv*) where the sum payable is allowed to be paid by instalments, from the date on which the last of such instalments was due:

Provided further that nothing in the foregoing proviso shall have the effect of reducing the period within which proceedings for recovery can be commenced, namely, after the expiration of one year from the last day of the financial year in which the demand is made.

Explanation.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

22. Insertion of new section 46A in Act XI of 1922.—After section 46 of the principal Act, the following section shall be inserted, namely.—

'46A. *Persons leaving India to obtain tax clearance certificates.*—(*1*) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure, has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(*2*) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory allows any person to whom sub-section (*1*) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine * * * * *.

Explanation.—For the purposes of this sub-section the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(*3*) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (*2*), the owner or charterer, as the case may be, shall be deemed to be an assessee in default within the meaning of sub-section (*1*) of section 46.

(*4*) The Central Government may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section'

23. Amendment of section 49B, Act XI of 1922.—Section 49B of the principal Act shall be numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so numbered, the following sub-section shall be inserted, namely —

"(*2*) For the purposes of sub-section (*1*), income-tax shall be deemed to include agricultural income-tax assessed on a company by any State Government other than the Government of Jammu and Kashmir and where any shareholder proves that the company has been so assessed to agricultural income-tax, he shall be entitled to

the reduction from the tax payable by him under this Act of a sum equal to -

(*a*) the appropriate agricultural income-tax (reduced by the amount of refund, if any, allowed to him by the State Government), or

(*b*) the appropriate Indian income-tax on the amount of the dividend which has not been increased under sub-section (*2*) of section 16,

whichever is the less.

Explanation.—In this sub-section,—

(*a*) 'appropriate agricultural income-tax' means such proportion of the agricultural income-tax as the amount of dividend which has not been increased under sub-section (*2*) of section 16 bears to the total profits of the company assessed to agricultural income-tax; and

(*b*) 'appropriate Indian income-tax' means such proportion of the income-tax payable by the shareholder under this Act as the amount of dividend which has not been increased under sub-section (*2*) of section 16 bears to the total income of the shareholder."

24. Amendment of section 49D, Act XI of 1922.—For section 49D of the principal Act, the following section shall be substituted, namely:—

"49D. *Relief in respect of incomes accruing or arising outside the taxable territories.*—(*1*) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories), he has paid in any country, with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.

(*2*) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (*1*) shall also apply in relation to any such income accruing or arising in the United Kingdom and chargeable under this Act for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951 or for the year ending on the 31st day of March, 1952.

Explanation.—In this section,—

(*i*) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(*ii*) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the other provisions of this Act but before deduction of any relief due under this section, by the total income;

(*iii*) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all reliefs due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income assessed in the said country ;

(*iv*) the expression "income-tax in relation to any country" includes any excess profits tax or business profits tax charged on the profits by the Government of that country and not by the Government of any part of that country or a local authority in that country."

25. Amendment of section 49E, Act XI of 1922.—In section 49E of the principal Act, for the words "against the tax" the words "against the tax, interest or penalty" shall be substituted.

26. Amendment of section 54, Act XI of 1922.—In sub-section (*3*) of section 54 of the principal Act,—

(*i*) for clause * * (*b*), the following clause shall be substituted, namely :—

* * * * *

"(*b*) of any such particulars to any person acting in the execution of this Act or of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the Taxation on Income (Investigation Commission) Act, 1947,"; or

(*ii*) in clause (*d*), after the word "Government" the words "or any Income-tax authority" shall be inserted and after the words "under this Act", the words "or under any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder" shall be inserted;

(*iii*) in clause (*gg*), for the words "registered accountant" the words "chartered accountant" shall be substituted.

27. Amendment of section 58C, Act XI of 1922.—In sub-section (*1*) of section 58C of the principal Act,—

(*i*) to clause (*d*), the following proviso shall be added, namely:—

"Provided that the fund may consist also of the accumulated balance due to an employee who has ceased to be an employee, and of interest (simple and compound) in respect thereof where such balance is retained in the fund in accordance with the provisions of clause (*g*).";

(*ii*) in clause (*g*), after the words "maintaining the fund" the words "unless at the request of the employee made in writing, the trustees of the fund consent to retain the whole or any part of the accumulated balance due to the employee in the fund to be drawn by him at any time on demand" shall be inserted.

28. Amendment of section 59, Act XI of 1922.—In sub-section (2) of section 59 of the principal Act, for clauses (*c*) and (*d*), the following clause shall be substituted, namely:—

"(*c*) prescribe the procedure for giving effect to the terms of any agreement for the avoidance of double taxation on income which may be entered into by the Central Government under section 49AA;".

29. Amendment of section 66A, Act XI of 1922.—In sub-section (1) of section 66A of the principal Act, for the words, brackets and figures "and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908) shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force", the following shall be substituted, namely:—

"and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it."

* * * * *

30. Amendment of the Schedule, Act XI of 1922.—(1) In the Schedule to the principal Act,—

(*a*) for the words "Superintendent of Insurance", wherever they occur, the words "Controller of Insurance" shall be substituted;

(*b*) in rule 2,—

(*i*) in clause (*b*), for the words "actuarial valuation made for the last inter-valuation period" the words "actuarial valuation made in accordance with the Insurance Act, 1938 (IV of 1938), in respect of the last inter-valuation period" shall be substituted;

(*ii*) for clause (*d*) of the proviso, the following shall be substituted, namely: —

"(*d*) in respect of all renewal premiums received during the preceding year an amount calculated at such percentage thereof as is permissible under sub-section (2) of section 40B of the Insurance Act, 1938 (IV of 1938) as reduced by any expenditure which is not admissible under section 10 of this Act";

(*c*) in clause (*a*) of rule 3, for the words "one-half" the words "four-fifths" shall be substituted, and in the second proviso for the words "one-half of such amount" the words and brackets "that proportion of such amount (one-half or four-fifths, as the case may be)" shall be substituted;

(*d*) for rule 8, the following rule shall be substituted, namely:—

"8. The profits and gains of the branches in the taxable territories of a person not resident in the taxable territories and carrying on any business of insurance, may, in the absence of

more reliable data be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from the taxable territories bears to his total premium income.

For the purposes of this rule, the world income in relation to life insurance business of a person not resident in the taxable territories shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories."

(2) The amendments made by sub-section (1) shall be deemed to be operative in relation to any assessment subsequent to the assessment for the year ending on the 31st day of March, 1951, whether such assessment has or has not been made before the commencement of this Act and where any such assessment has been made before such commencement it shall be lawful for the Income-tax Officer to revise it, wherever necessary, to give effect to such amendments.

* * * * *

31. **Validity of certain notices and assessments.**—For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before the 1st day of April, 1948, in any case where proceedings in respect of such assessment or re-assessment were commenced under the said sub-sections after the 8th day of September, 1948, and any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1952, shall, notwithstanding any judgment or order of any court, Appellate Tribunal or Income-tax authority to the contrary, be deemed to have been validly issued or completed, as the case may be, and no such notice, assessment or re-assessment shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or re-assessment for any year prior to the 1st day of April, 1948.

M. N. KAUL,
Secretary.

THE HOUSE OF THE PEOPLE

The following Bills were introduced in the House of the People on 6th November, 1952:—

BILL* NO. 100 OF 1952

A Bill further to amend the Indian Tariff Act, 1934.

BE it enacted by Parliament as follows :—

1. **Short title and commencement.**—(1) This Act may be called the Indian Tariff (Fourth Amendment) Act, 1952.

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*The President has, in pursuance of clause (1) of article 117 of the Constitution of India, recommended to the House of the People the introduction of the Bill.

(2) The provisions of clause (*iii*) of section 2 [relating to Item No. 63 (34)] shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; but the remaining provisions shall come into force at once.

2. Amendment of the First Schedule, Act XXXII of 1934.—In the First Schedule to the Indian Tariff Act, 1934,—

(*i*) in Items No. 8(3), 11(6), 18, 20(3), 20(4), 20(8), 20(9), 21(3), 28(4), 28(15), 28(17), 28(20), 30(7), 30(9), 30(10), 40(4), 40(5), 45(4), 46, 46(1), 47, 47(1), 48, 48(1), 48(4), 48(5), 48(7), 50(3), 60(7), 63(33) (a), 63(35), 64, 64(3), 64(4), 65(a), 66(a), 66(1), 67, 67(1), 67(2), 68, 68(2), 69(2), 70, 70(1), 70(2), 70(3), 70(4), 70(5), 70(6), 70(9), 71(7), 72(12), 72(33), 73(7), 73(16), 75(5), 75(6), 75(7), 75(8) and 82(3), in the last column headed "Duration of protective rates of duty", for the word, figures and letters "December 31st, 1952", wherever they occur, the word, figures and letters "December 31st, 1953" shall be substituted ;

(*ii*) in Item No. 28(18)(b), (c) and (d), in the last column headed, "Duration of protective rates of duty", for the word, figures and letters "December 31st, 1952", wherever they occur, the word, figures and letters "December 31st, 1954" shall be substituted ;

(*iii*) for Item No. 63(34), the following Item shall be substituted namely :—

"63(34)	Iron or steel hoops—					
	(*a*) Jute baling hoops—					
	(*i*) of British manufacture.	Protective	30 per cent. *ad valorem*.	..	..	December 31st, 1953.
	(*ii*) not of British manufacture.	Protective	40 per cent. *ad valorem*.	..	..	December 31st, 1953.
	(*b*) Cotton baling hoops—					
	(*i*) of British manufacture.	Protective	30 per cent. *ad valorem*.	..	..	December 31st, 1953.
	(*ii*) not of British manufacture.	Protective	40 per cent. *ad valorem*.	..	..	December 31st, 1953"

(*iv*) in Item No. 72(34), in the last column headed "Duration of protective rates of duty", for the word, figures and letters "March 31st 1953", the word, figures and letters "December 31st, 1953" shall be substituted;

(*v*) in Item No. 73(15), in the last column headed "Duration of protective rates of duty", for the word, figures and letters "December 31st, 1952", wherever they occur, the word, figures and letters "December 31st, 1955" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The object of the present Bill is to amend the First Schedule to the Indian Tariff Act, 1934 (XXXII of 1934) in order to continue protection to certain industries on the advice of the Tariff Commission.

2. The industries which will continue to be protected are :—

S. No.	Item No. of Tariff	Name of the industry
1	8(3), 20(3), 20(4), 20(8) and 20(9)	Preserved fruits.
2	11(6)	Sago globules and tapioca pearls.
3	18	Cocoa powder and chocolate.
4	21(3)	Glucose.
5	28(4)	Soda ash.
6	28(15)	Calcium chloride.
7	28(17)	Bichromates.
8	28(18)(b), (c) & (d)	Photographic chemicals (sodium sulphite, sodium bisulphite and sodium thiosulphate).
9	28(20)	Oleic and stearic acids.
10	30(7) and 45(4)	Pencils.
11	30(9) and 30(10)	Coated abrasives.
12	40(4) and 40(5)	Plywood and battens for tea chests.
13	46, 46(1), 47, 47(1) and 48	Sericulture.
14	48(1), 48(4), 48(5) and 48(7)	Artificial silk and cotton and artificial silk mixed fabrics.
15	50(3)	Cotton and hair belting.
16	60(7)	Sheet glass.
17	63(33) (a)	Iron or steel wood-screws.
18	63(34)	Iron or steel baling hoops.
19	63(35)	Ferro-silicon.
20	64, 64(3), 64(4), 65(a), 67, 67(1), 67(2), 68, 68(2), 69(2), 70, 70(1), 70(4), 70(5), 70(6), 70(9) and 72(12).	Non-ferrous metals.
21	66(a) and 66(1)	Aluminium.
22	70(2) and 70(3)	Antimony.
23	71(7)	Hurricane lanterns.
24	72(33)	Pickers used in textile industries
	72(34)	Cotton textile machinery.

S. No.	Item No. of Tariff	Name of the industry
26	73(7)	Dry batteries.
27	73(15)	Battery for motor vehicle.
28	73(16) and 82(3)	Plastics— (*i*) Electrical accessories made of plastics, and (*ii*) Phenol-formaldehyde moulding powder.
29	75(5), 75(6), 75(7) and 75(8) . .	Bicycles (including parts and accessories thereof).

T. T. KRISHNAMACHARI.

NEW DELHI ;
The 1st November, 1952.

BILL* No. 101 OF 1952

A Bill to make provision for the prevention of adulteration of food.

BE it enacted by Parliament as follows :—

PRELIMINARY

1. Short title and extent.—(*1*) This Act may be called the Food Adulteration Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*i*) "adulterated"—an article of food shall be deemed to be adulterated—

(*a*) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice ;

(*b*) if the article has been mixed with any other substance so as to reduce, lower or injuriously affect its quality or nutritive value ;

(*c*) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof ;

(*d*) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof ;

*The President has, in pursuance of clause (3) of article 117 of the Constitution of ia recommended to the House of the People the consideration of the Bill.

(*e*) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health ;

(*f*) if the article, whether manufactured or not, consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is otherwise unfit for human consumption ,

(*g*) if the article is obtained from a diseased animal or from an animal fed upon unwholesome food ;

(*h*) if there is added to the article any poisonous or other ingredient which renders it injurious to health ;

(*i*) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health ;

(*j*) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article ;

(*k*) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(*l*) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;

(*ii*) "Central Food Laboratory" means any laboratory or institute established or specified under section 4 ;

(*iii*) "Committee" means the Central Committee for Food Standards constituted under section 3 ;

(*iv*) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the Official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act;

(*v*) "food" means any article used as food or drink by man, other than drugs and water and includes—

(*a*) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(*b*) any flavouring matter or condiments ;

(*vi*) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer in charge of Health administration in a State by whatever name he is called ;

(*vii*) "local area" means any area, whether urban or rural, declared by the State Government, by notification in the Official Gazette, to be a local area for the purposes of this Act;

(*viii*) "local authority" means in the case of—

(*1*) a local area which is—

(*a*) a municipality, the municipal board ;

(*b*) a cantonment, the cantonment authority;

(*c*) a notified area, the notified area committee;

(*2*) any other local area, such authority as may be prescribed by the State Government under this Act;

(*ix*) "misbranded"—an article of food shall be deemed to be misbranded—

(*a*) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character ;

(*b*) if it is falsely stated to be the product of any place or country ;

(*c*) if it is sold by a name which belongs to another article of food ;

(*d*) if it is so coloured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is ;

(*e*) if false claims are made for it upon the label or otherwise ;

(*f*) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act ;

(*g*) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular : or if the package is otherwise deceptive with respect to its contents ;

(*h*) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article ;

(*i*) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses ;

(*j*) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder ;

(*k*) if it is not labelled in accordance with the requirements of this Act or rules made thereunder ;

(*x*) "package" means a box, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed ;

(*xi*) "premises" include any manufacturing shop, stall, or place where any article of food is sold or manufactured or stored for sale ;

(*xii*) "prescribed" means prescribed by rules made under this Act ;

(*xiii*) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article ;

(*xiv*) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder ;

(*xv*) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant for human use.

CENTRAL COMMITTEE FOR FOOD STANDARD AND CENTRAL FOOD LABORATORY

3. The Central Committee for Food Standards.—(*1*) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(*2*) The Committee shall consist of the following members, namely :—

(*a*) the Director-General, Health Services, *ex-officio*, who shall be the Chairman ;

(*b*) the Director of the Central Food Laboratory, *ex-officio*;

(*c*) four experts connected with prevention of food adulteration from different States nominated by the Central Government ;

(*d*) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence nominated by the Central Government.

(*e*) one representative each nominated by the Government of each Part A State and Part B State ;

(*f*) two representatives nominated by the Central Government to represent the Part C States.

(*3*) The members of the Committee referred to in clauses (*c*), (*d*), (*e*) and (*f*) of sub-section (*2*) shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government, make bye-laws for the purpose of regulating its own procedure and the transaction of its business.

4. Central Food Laboratory.—(1) The Central Government may, by notification in the Official Gazette,—

(a) establish a Central Food Laboratory ; or

(b) specify any laboratory or institute as a Central Food Laboratory;

to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

(2) The Central Government may, after consultation with the Committee, make rules prescribing—

(a) the functions of the Central Food Laboratory;

(b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;

(c) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

GENERAL PROVISIONS AS TO FOOD

5. Prohibition of import of certain articles of food.—From such date as may be fixed by the Central Government by notification in the Official Gazette in this behalf, no person shall import into India—

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and

(iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

6. Application of law relating to sea customs and powers of Customs Officers.—(1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878 (VIII of 1878) shall, subject to the provisions of section 16 of this Act, apply in respect of articles of food, the import of which is prohibited under section 5 of this Act, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs shall have

the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-section (1) the Customs Collector, or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under section 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected article of food found therein to the said Laboratory.

7. Prohibition of manufacture, sale, etc. of certain articles of food.—From such date as may be fixed by the State Government, by notification in the Official Gazette, in this behalf no person shall himself or by any person on his behalf manufacture for sale, or sell or distribute—

(*i*) any adulterated food;

(*ii*) any misbranded food;

(*iii*) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(*iv*) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases; or

(*v*) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

ANALYSIS OF FOOD

8. Public Analysts.—The State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such qualifications as may be prescribed, to be public analysts and define the local areas over which they shall exercise jurisdiction:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed:

Provided further that the State Government may appoint one public analyst for two or more local areas, such local areas being regarded as one unit for the purposes of this Act.

9. Food Inspectors.—(1) Subject to the provisions of section 14 the State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be food inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign to them:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed.

(2) Every food inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

10. Powers of food inspectors.—(1) A food inspector shall have power—

(*a*) to take samples of any article of food from—

(*i*) any person selling such article;

(*ii*) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(*iii*) a consignee after delivery of any such article to him; and

(*b*) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(*c*) with the previous approval of the health officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(*2*) Any food inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis.

(*3*) Where any sample is taken under clause (*a*) of sub-section (*1*) or sub-section (*2*), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(*4*) If any article intended for food appears to any food inspector to be adulterated or misbranded he may seize and carry away such article in order that it may be dealt with as hereinafter provided.

(*5*) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale.

11. Procedure to be followed by food inspectors.—(*1*) When a food inspector takes a sample of food for analysis, he shall—

(*a*) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample;

(*b*) separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits; and

(*c*) (*i*) deliver one of the parts to the person from whom the sample has been taken;

(*ii*) send another part for analysis to the public analyst; and

(*iii*) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (*2*) of section 13, as the case may be.

(*2*) If the person from whom the sample has been taken declines to accept one of the parts, the public analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the food inspector who shall retain it for production in case legal proceedings are taken.

(*3*) When a sample of any article of food is taken under sub-section (*1*) or sub-section (*2*) of section 10, the food inspector shall send a sample

of it in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

(4) If the sample of the article is reported by the public analyst to be not adulterated, the article shall be returned at the cost of the Government to the owner or person from whose possession it was seized.

(5) An article of food seized under sub-section (4) of section 10, shall be produced before a magistrate as soon as possible:

Provided that in the case of any article of which samples have been sent to the public analyst for analysis it may be produced on or after the receipt of the report of the public analyst.

(6) If it appears to the magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (5) is adulterated, he may order it—

(a) to be forfeited to the local authority, or

(b) to be destroyed at the cost of the owner of or the person from whom it was seized so as to prevent its being used as human food,

(c) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name, or

(d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

12. Purchaser may have food analysed.—(1) A purchaser of any article of food other than a food inspector shall be entitled, on payment of such fees as may be prescribed, to have such article analysed by the public analyst and to receive from him a report of the result of his analysis.

(2) Before submitting such article to be analysed as aforesaid the purchaser shall notify in writing to the seller his intention to have it so analysed; and the public analyst on receiving such article for analysis shall divide it into three parts, of which one is to be analysed, another to be retained by him in order to be returned with his report and the third to be delivered on demand to the seller:

Provided that each part other than the part analysed shall be marked and sealed or fastened up in such manner as may be prescribed.

13. Report of public analyst.—(1) The public analyst shall deliver, in such form as may be prescribed, a report to the food inspector of the result of the analysis of any article of food submitted to him for analysis.

(2) Where a food inspector or an accused vendor under this Act is not satisfied with the report given by the public analyst under sub-section (1), he may, on payment of the prescribed fee send the part of the sample mentioned in sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for report and the Director of the Laboratory shall thereupon grant a certificate in the form prescribed specifying the result of his analysis.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the public analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860):

Provided that these officers shall not be required to attend the court for examination or cross-examination in connection with reports or certificates of analysis signed by them under this Act.

MISCELLANEOUS

14. Import of food and sale of food in railway and other premises.—(1) The Central Government may, by notification in the Official Gazette, appoint any person to exercise the powers of a food inspector under sections 10 and 11,—

(a) at any major port, air port or land customs station in respect of any article of food which is being imported through such port or station;

(b) in respect of any railway station or group of railway stations where food is being sold:

Provided that the Central Government may, instead of making any appointment under this section, authorise any food inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

(2) Every person appointed or authorised under sub-section (1) shall be deemed to be a food inspector for the purposes of this Act.

15. Notification of food poisoning.—The State Government may, by notification in the Official Gazette, require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

16. Penalties.—If any person—

(a) whether by himself or by any other person on his behalf, imports into India or manufacturers for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or

(b) prevents a food inspector from taking a sample as authorised by this Act, or

(c) prevents a food inspector from exercising any other power conferred on him by or under this Act,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable for the first offence with imprisonment for a term which may extend to three months, or with fine, or with

both, and for a second or subsequent offence with imprisonment for a term which may extend to one year, or with fine, or with both.

17. Offences by companies.—(*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(*a*) "company" means any body corporate, and includes a firm or other association of individuals; and

(*b*) "director" in relation to a firm means a partner in the firm.

18. Forfeiture of property.—Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

19. Defences which may or may not be allowed in prosecutions under this Act.—(*1*) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(*2*) A vendor shall not be deemed to have committed an offence if he proves—

(*i*) that the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality;

(*ii*) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and

(*iii*) that he sold it in the same state as he purchased it:

Provided that such a defence shall be open to the vendor only if he has, within seven days of the receipt of a copy of the report of the public analyst, submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and

specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person:

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vendor only if the vendor proves to the satisfaction of the court that he had taken reasonable steps to ascertain and did in fact believe in, the accuracy of the statement contained in the warranty.

(3) Any person by whom a warranty as is referred to in sub-section (2), is alleged to have been given shall be entitled to appear at the hearing and give evidence.

(4) Where an employer is charged with an offence under this Act he shall be entitled, on application duly made by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Act and that the said other person committed the offence without his knowledge, consent or connivance, the said other person shall be convicted and the employer shall be acquitted.

20. Cognizance and trial of offences.—(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority.

(2) No court inferior to that of a magistrate of the second class shall try any offence under this Act.

21. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

22. Power of the Central Government to make rules.—The Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules—

(a) specifying the articles of food or classes of food for the import of which a licence is required and prescribing the form and conditions of such licence, the authority empowered to issue the same and the fees payable therefor;

(b) defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food;

(c) laying down special provisions for imposing rigorous control over the production, distribution and sale of milk and milk products;

(d) laying down special provisions for imposing rigorous control over the production, distribution and sale of vanaspati and edible oils, including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of vanaspati and edible oils;

(*e*) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article;

(*f*) defining the qualifications, powers and duties of food inspectors and public analysts;

(*g*) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food;

(*h*) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health ;

(*i*) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up;

(*j*) specifying a list of permissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amounts of each preservative;

(*k*) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food ;

(*l*) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, of any article or classes of articles of food.

23. Power of the State Government to make rules.—(*1*) The State Government may, after consultation with the Committee and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of section 22.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) define the powers and duties of the Food (Health) Authority and local authority and jurisdiction of food inspectors and public analysts;

(*b*) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of articles of food or any specified article of food or class of articles of food, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(*c*) direct a fee to be paid for analysing any article of food or for any matter for which a fee may be prescribed under this Act;

(*d*) direct that the whole or any part of the fines imposed under this Act shall be paid to a local authority on realisation;

(e) provide for the delegation of the powers and functions conferred by this Act on the State Government or food authorities to subordinate authorities.

24. Repeal of corresponding laws.—If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed

Provided that in so far as any such corresponding law makes provision for any of the matters dealt with in section 7 or for the punishment of offences committed in contravention of any such law, the repeal shall take effect only on the date fixed by the State Government in exercise of the powers conferred upon it by section 7.

STATEMENT OF OBJECTS AND REASONS

Laws exist in a number of States in India for the prevention of adulteration of food-stuffs but they lack uniformity having been passed at different times without mutual consultation between States The need for Central legislation for the whole country in this matter has been felt since 1937 when a Committee appointed by the Central Advisory Board of Health recommended this step "Adulteration of food-stuffs and other goods" is now included in the Concurrent List in the Constitution of India. It has therefore become possible for the Central Government to enact all-India legislation on this subject The Bill will replace local food adulteration laws where they exist and also apply to those States where there are no local laws on the subject Among others, it provides for (1) a Central Food Laboratory to which food samples can be referred for final opinion in disputed cases (clause 4), (2) a Central Committee for Food Standards consisting of representatives of Central and State Governments to advise on matters arising from the administration of the Act (clause 8) and (3) the vesting in the Central Government of the rule-making power regarding standards of quality for articles of food and certain other matters (clause 22).

AMRIT KAUR.

NEW DELHI ;
The 8th October, 1952.

FINANCIAL MEMORANDUM

The Bill involves expenditure to the Central Government on account of the proposed Central Food Laboratory and Inspection Staff at the Railway Stations and Ports According to present rough estimates, the total expenditure from Central Revenues on account of the Bill is not expected to exceed Rs. 5,75,000 non recurring and Rs 1,43,000 recurring per annum.

The expenditure on the enforcement of the Act in the States will devolve on State Governments and local bodies.

The following Bills were introduced in the House of the People on 10th November, 1952:—

BILL* NO. 99 OF 1952

A Bill to provide for the levy and collection of a cess for raising funds for the purpose, of developing Khadi and other handloom industries and for promoting the sale of khadi and other handloom cloth.

BE it enacted by Parliament as follows :—

1. Short title and extent.—(*1*) This Act may be called the Khadi and other Handloom Industries (Development) Cess Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) 'handloom cloth' means any cloth woven from any material, including silk, artificial silk, staple fibre and wool, on looms worked by manual labour ;

(*b*) 'handloom industries' means industries which manufacture handloom cloth ;

(*c*) 'khadi' means any cloth woven on looms worked by manual labour, from yarn hand-spun in India.

3. Levy of cess.—(*1*) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied and collected on all cloth manufactured in the territories to which this Act extends a cess in the nature of an excise duty at the rate of three pies per yard.

(*2*) The cess shall be in addition to the duty of excise chargeable on cloth under the Central Excises and Salt Act, 1944 (I of 1944), and shall be levied and collected in the same manner as the duty of excise on cloth is levied and collected under that Act.

(*3*) In this section, 'cloth' has the meaning assigned to it in the First Schedule to the Central Excises and Salt Act, 1944 (I of 1944).

4. Application of proceeds of cess.—The Central Government may utilise the net proceeds of the cess for meeting the costs of such measures as it considers necessary or expedient to take for developing handloom industries and, in particular, measures for—

(*a*) undertaking, assisting or encouraging handloom industries ;

(*b*) encouraging the adoption of improved methods of manufacturing khadi and other handloom cloth ;

(*c*) encouraging and developing research in the technique of production of khadi and other handloom cloth and in the art of designs relating thereto ;

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*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to the House of the People the introduction and consideration of the Bill.

(*d*) maintaining or assisting in the maintenance of institutes for the development of handloom industries ;

(*e*) promoting the sale and marketing of khadi and other handloom cloth ;

(*f*) fixing the grades and standards of khadi and other handloom cloth and enforcing quality control;

(*g*) promoting and encouraging co-operative effort among manufacturers of khadi and other handloom cloth.

5. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—

(*a*) the manner in which the proceeds of the cess levied under this Act may be applied for all or any of the purposes specified in section 4 ;

(*b*) the making of grants or loans from such proceeds to State Governments for all or any of the said purposes;

(*c*) the allocation of the net proceeds of the cess between khadi and other handloom industries;

(*d*) the manner in which accounts relating to the proceeds of the cess shall be maintained;

(*e*) the exemption from the whole or any part of the cess levied under this Act of any variety of cloth which is for the time being exempt from the duty of excise imposed under the Central Excises and Salt Act, 1944 (I of 1944).

STATEMENT OF OBJECTS AND REASONS

Both the Khadi and the Handloom Cloth Industry have a definite place in our national economy. Khadi makes its contribution towards the relief of rural unemployment and provides a supplementary source of livelihood to our agricultural population. The handloom industry has a substantial part to play in supplying the demand for cloth in the country. Both these industries, however, have been suffering from many handicaps of late, mainly in finding an adequate market for their products. They have to cater to certain special markets and to individual and local tastes. For this purpose they need assistance in order to obtain adequate supplies of cotton and yarn at reasonable rates, to effect improvement in their methods and technique of production and for organizing the sale and marketing of their goods. In order to finance the development of these industries on these lines, it is proposed that a cess of three pies per yard should be imposed on all mill-made cloth, whether exported or consumed in this country. The cess would take the form of a duty of excise and is expected to yield more than rupees six crores per year. The proceeds of the cess will be allocated

by Government for the development of the khadi and the handloom Industry, the proportions being determined each year according to circumstances. Legislation is required for imposing this cess as a duty of excise.

T. T. KRISHNAMACHARI.

NEW DELHI:
The 28th October, 1952.

FINANCIAL MEMORANDUM

The Ministry of Commerce and Industry proposes to introduce a Bill to provide for the levy and collection of a cess for raising funds for the purpose of developing handloom industry and for promoting the sale of khadi and other handloom cloth. The cess would be in the nature of a duty of excise.

2. The Bill provides for a levy of cess of 3 pies per yard of mill-made cloth produced in the country. On the basis that the cess would be levied on more than 4,000 million yards it is expected that the cess will yield more than Rs. 6 crores per annum.

3. The above cess will be collected in the same manner as the duty of excise on cloth, by the Central Excise Department, and the net proceeds will be available for distribution for developing the Handloom and Khadi Industries.

BILL NO. 102 OF 1952

A Bill to amend the Indian Power Alcohol Act, 1948

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Indian Power Alcohol (Amendment) Act, 1952.

2. Amendment of section 1, Act XXII of 1948.—In sub-section (2) of section 1 of the Indian Power Alcohol Act, 1948 (hereinafter referred to as the principal Act), for the words and letter "except Part B States", the words "except the State of Jammu and Kashmir" shall be substituted.

3 Substitution of new section for section 2 in Act XXII of 1948.—For section 2 of the principal Act, the following section shall be substituted, namely:—

"2. *Declaration as to expediency of control by the Union.*—It is hereby declared that it is expedient in the public interest that the Union should take under its control the power alcohol industry."

4. Validation of certain acts and indemnity in respect thereof.—All acts of executive authority, proceedings and sentences which have been done, taken or passed with respect to, or on account of, power alcohol during the period commencing on the 26th day of January, 1950, and ending with the commencement of the Industries (Development and Regulation) Act, 1951 (LXV of 1951), by the Government or by any officer of the Government or by any other authority in the belief or purported belief that the acts, proceedings or sentences were being done, taken or passed under the Indian Power Alcohol Act, 1948, shall be as valid and operative

as if they had been done, taken or passed in accordance with law, and no suit or other legal proceeding shall be maintained or continued against any authority whatsoever on the ground that any such acts, proceedings or sentences were not done, taken or passed in accordance with law.

STATEMENT OF OBJECTS AND REASONS

The Indian Power Alcohol Act, 1948 (XXII of 1948) was enacted for the development of the power alcohol industry under the control of the Central Government, but the Act has not so far been extended to Part B States. Some of the Part B States like the Patiala and East Punjab States Union are close to the areas in which power alcohol is produced, *e.g.*, Uttar Pradesh, and offer a convenient outlet for power alcohol by reason of their geographical location. With a view to providing a better outlet for power alcohol produced in this country, it is necessary to make the Act applicable to Part B States as well and the present Bill seeks to do so.

2. Opportunity has also been taken—

(*a*) to substitute a new section for section 2 of the principal Act in order to bring its language in conformity with the language of entry 52 of List I in the Seventh Schedule to the Constitution, and

(*b*) to validate all action taken between the commencement of the Constitution and the commencement of the Industries (Development and Regulation) Act 1951 (the Schedule to which includes power alcohol as one of the industries within the control of the Union), in order to remove any doubt as to whether in the absence of a declaration made by Parliament by law, the declaration contained in section 2 was effective during that period.

T. T. KRISHNAMACHARI.

NEW DELHI,
The 4th November, 1952.

BILL NO. 107 OF 1952

A Bill further to amend the Industrial Finance Corporation Act, 1948.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Industrial Finance Corporation (Amendment) Act, 1952.

2. Amendment of section 2, Act XV of 1948.—In clause (*c*) of section 2 of the Industrial Finance Corporation Act, 1948 (hereinafter referred to as the principal Act), after the words "or processing of goods" the words "or in shipping" shall be inserted.

3 Amendment of section 10, Act XV of 1948.—Section 10 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and—

(*a*) in sub-section (*1*) as so re-numbered,—

(*i*) in clause (*a*) for the word "three" the word "four" shall be substituted;

(*ii*) after clause (*f*), the following clause shall be inserted, namely:—

"(*g*) One Deputy Managing Director appointed by the Corporation."

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) The Deputy Managing Director shall have the right to attend any meeting of the Board or of the Executive Committee and take part in its discussions but shall not have the right to vote at any such meeting:

Provided that when the Managing Director is for any reason unable to attend any such meeting, the Deputy Managing Director shall have the right to vote for him at that meeting."

4. Amendment of section 11, Act XV of 1948.—In section 11 of the principal Act,—

(*i*) in sub-section (*1*), for the words "the Central Government" the words "the authority appointing him" shall be substituted;

(*ii*) in the third proviso to sub-section (*2*), after the words "Provided further that" the word "such" shall be inserted;

(*iii*) in sub-section (*4*), after the words "the Managing Director" the words "and the Deputy Managing Director" shall be inserted.

5. Amendment of section 12, Act XV of 1948.—In section 12 of the principal Act,—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) except in the case of the Managing Director or the Deputy Managing Director, is a salaried official of the Corporation; or"

(*ii*) in clause (*b*), after the word "payment" the words "of his debts" shall be inserted.

6. Substitution of new section for section 13 in Act XV of 1948.—For section 13 of the principal Act, the following section shall be substituted, namely:—

"13. *Removal of Director from office.*—(*1*) The Central Government may at any time remove the Managing Director from office after giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that such power shall not be exercised unless the Board at a meeting specially convened for the purpose recommends the removal of the Managing Director by not less than two-thirds of the Directors present and voting.

(2) The Board may remove from office any Director who—

(a) is, or has become, subject to any of the disqualifications mentioned in section 12; or

(b) without excuse sufficient in the opinion of the Board to exonerate it, is absent without leave of the Board from more than three consecutive meetings of the Board."

7. Insertion of new section 13A in Act XV of 1948.—After section 13 of the principal Act, the following section shall be inserted, namely:—

"13A. *Casual vacancy of Managing Director.*—If the Managing Director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Central Government may, after consideration of the recommendation of the Board, appoint another person to act in his place."

8. Amendment of section 14, Act XV of 1948.—In section 14 of the principal Act, for the words "such officers" the words "a Deputy Managing Director and such other officers" shall be substituted.

9. Amendment of section 17, Act XV of 1948.—In sub-section (3) of section 17 of the principal Act,—

(i) after the words "as the case may be, shall" the words, brackets and figures "subject to the provisions of sub-section (2) of section 10" shall be inserted;

(ii) after the words "the Chairman" the words "or in his absence, any other person presiding" shall be inserted.

10. Amendment of section 19, Act XV of 1948.—To section 19 of the principal Act, the words "or in consultation with the Reserve Bank, with a scheduled bank or a State Co-operative Bank" shall be added.

11. Amendment of section 21, Act XV of 1948.—After sub-section (2) of section 21 of the principal Act, the following sub-section shall be inserted, namely:—

"(3) The Corporation may, for the purpose of carrying out its functions under this Act, borrow money from the Reserve Bank—

(a) against securities of the Central Government or of any State Government, repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date on which the money is so borrowed; or

(b) against bonds and debentures issued by the Corporation under sub-section (1) or against such other security as may be required by the Reserve Bank maturing and repayable within a period not exceeding eighteen months from the date on which the money is so borrowed:

Provided that the amount borrowed by the Corporation under clause (b) shall not at any time exceed three crores of rupees in the aggregate."

12. Amendment of section 23, Act XV of 1948.—In section 28 of the principal Act.—

(*i*) after clause (*e*) of sub-section (*1*), the following clause shall be inserted, namely:—

"(*ee*) acting as agent for the Central Government or, with its approval for the International Bank for Reconstruction and Development in the transaction of any business with an industrial concern in respect of loans or advances granted, or debentures subscribed, by either of them."

(*ii*) in sub section (*2*), for the words, brackets and letters "sub-clauses (*a*) and (*e*)" the words, brackets, letters and figure "clauses (*a*) and (*e*) of sub-section (*1*)" shall be substituted.

13 Amendment of section 24, Act XV of 1948.—In section 24 of the principal Act, for the words "for an amount equivalent in the aggregate to more than ten per cent of the paid up share capital of the Corporation but in no case exceeding fifty lakhs of rupees", the following shall be substituted, namely –

"for an amount exceeding one crore of rupees in the aggregate:

Provided that the aforesaid limit of one crore of rupees shall not apply to any such arrangement when any loans, advances or debentures are, on the recommendation of the Corporation, guaranteed by the Central Government as to the repayment of the principal and the payment of the interest."

14. Amendment of section 25, Act XV of 1948.—To sub-section (*2*) of section 25 of the principal Act, the words "or in any instrument relating to the industrial concern" shall be added.

15. Amendment of section 26, Act XV of 1948.—In section 26 of the principal Act, after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) grant any loan or advance on the security of its own shares."

16. Substitution of new section for section 27 in Act XV of 1948.—For section 27 of the principal Act, the following section shall be substituted, namely:—

"27. *Loans in foreign currency.*—(*1*) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947) or in any other enactment for the time being in force relating to foreign exchange, the Corporation may, for the purpose of granting loans or advances to industrial concerns, borrow, with the previous consent of the Central Government, foreign currency from the International Bank for Reconstruction and Development or otherwise.

(*2*) The Central Government may, where necessary, guarantee all loans taken by the Corporation under sub-section (*1*) as to the repayment of the principal and the payment of the interest.

(3) All loans and advances to industrial concerns out of foreign currency borrowed under sub-section (1) shall be granted in Indian currency and shall be repayable by such concerns in the Indian currency.

(4) Any loss or profit accruing to the Corporation in connection with any borrowing of foreign currency under sub-section (1) or its repayment on account of any fluctuations in the rates of exchange shall be re-imbursed by, or paid to, the Central Government, as the case may be."

17. Amendment of section 28, Act XV of 1948.—After sub-section (3) of section 28 of the principal Act, the following sub-section shall be inserted, namely:—

"(3A) Where the management of an industrial concern is taken over by the Corporation or any property is sold or realised by it under the provisions of sub-section (1), all costs, charges and expenses properly incurred by it as incidental to such management, sale or realisation shall be recoverable from the industrial concern, and the money which is received by it from such management sale or realisation shall, in the absence of any contract to the contrary, be held by it in trust to be applied, firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Corporation, and the residue of the money so received shall be paid to the person entitled thereto."

18. Amendment of section 29, Act XV of 1948.—In section 29 of the principal Act,—

(i) for the words beginning with the words "Notwithstanding any agreement to the contrary" and ending with the words "its liabilities to the Corporation", the following shall be substituted, namely:—

"Notwithstanding anything in any agreement to the contrary, the Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Corporation,—"

(ii) in clause (d), for the words beginning with the words "or depreciates in value" and ending with the words "is not given" the following shall be substituted, namely:—

"or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given;"

(iii) in clause (e), for the words "machinery or other equipment" the words "any machinery, plant or other equipment" shall be substituted.

(iv) in clause (f), the words "in the opinion of the Board" shall be omitted.

19. Amendment of section 30, Act XV of 1948.—In section 30 of the principal Act,—

(i) in sub-section (1), for the words beginning with the words "Where by reason of the breach" and ending with the words "to

repay such loan or advance", the following shall be substituted, namely:—

"Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Corporation or where the Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 29 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of section 69 of the transfer of Property Act, 1882 (IV of 1882),";

(*ii*) for sub-section (*13*), the following sub-section shall be substituted, namely:—

"(*13*) The functions of a District Judge under this section shall, in a presidency town, be exercised by the High Court."

20. Insertion of new sections 30A to 30E in Act XV of 1948.—After section 30 of the principal Act, the following sections shall be inserted, namely:—

"30A. *Power of Corporation to appoint directors of an industrial concern when management is taken over*.—(*1*) When the management of an industrial concern is taken over by the Corporation, the Corporation may, by order notified in the Official Gazette, appoint as many persons as it thinks fit to be the directors of that industrial concern.

(*2*) The power to appoint directors under this section includes the power to appoint any individual, firm or company to be the managing agents of the industrial concern on such terms and conditions as the Corporation may think fit.

30B. *Effect of notified order appointing directors*.—On the issue of a notified order under section 30A,—

(*a*) all persons holding office as directors of the industrial concern immediately before the issue of the notified order shall be deemed to have vacated their offices as such;

(*b*) any contract of management between the industrial concern and any managing agent thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;

(*c*) the managing agent, if any, appointed under section 30A shall be deemed to have been duly appointed in pursuance of the Indian Companies Act, 1913 (VII of 1913) and the memorandum and articles of association of the industrial concern and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Corporation;

(*d*) the directors appointed under section 30A shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to

which the industrial concern is, or appears to be, entitled, and all the property and effects of the industrial concern shall be deemed to be in the custody of the directors as from the date of the notified order;

(*c*) the directors appointed under section 30A shall be, for all purposes, the directors of the industrial concern duly constituted under the Indian Companies Act, 1913 (VII of 1913) and shall alone be entitled to exercise all the powers of the directors of the industrial concern, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial concern or from any other source.

30C. *Powers and duties of directors.*—(*1*) Subject to the control of the Corporation, the directors appointed under section 30A shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial concern and shall exercise such powers and have such duties as may be prescribed.

(2) Without prejudice to the generality of the powers vested in them under sub-section (*1*), the directors appointed under section 30A may, with the previous approval of the Corporation, make an application to a Court for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 30A, between the industrial concern and any other person and the Court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial concern, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement and the contract or agreement shall have effect accordingly.

30D. *No right to compensation for termination of contract of managing agents.*—(*1*) Notwithstanding anything contained in any law for the time being in force, no managing agent of an industrial concern shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with such concern.

(2) Nothing contained in sub-section (*1*) shall effect the right of any such managing agent to recover from the industrial concern moneys recoverable otherwise than by way of such compensation.

30E. *Application of Act VII of 1913.*—(*1*) Where the management of an industrial concern, being a company as defined in the Indian Companies Act, 1913 (VII of 1913), is taken over by the Corporation, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such concern,—

(*a*) it shall not be lawful for the shareholders of such concern or any other person to nominate or appoint any person to be a director of the concern;

(*b*) no resolution passed at any meeting of the shareholders of such concern shall be given effect to unless approved by the Corporation;

(*c*) no proceeding for the winding up of such concern or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the Corporation.

(*2*) Subject to the provisions contained in sub-section (*1*) and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913 (VII of 1913) shall continue to apply to such concern in the same manner as it applied thereto before the issue of the notified order under section 30A."

21. Amendment of section 32, Act XV of 1948.—In the first proviso to sub-section (*2*) of section 32 of the principal Act, after the words, brackets and figures "given in pursuance of sub-section (*2*) of section 21" the words, brackets and figures "or sub-section (*2*) of section 27" shall be inserted.

22. Insertion of new section 32A in Act XV of 1948.—After section 32 of the principal Act, the following section shall be inserted, namely:—

"32A. *Special reserve fund.*—(*1*) All dividends accruing on the shares of the Corporation held by the Central Government and the Reserve Bank shall, instead of being paid to them, be credited to a special reserve fund until the aggregate of the sums standing in the reserve fund established under sub-section (*1*) of section 32 and the special reserve fund exceeds fifty lakhs of rupees.

(*2*) No shareholder of the Corporation other than the Central Government or the Reserve Bank shall have any claim to the special reserve fund referred to in sub-section (*1*)."

23. Amendment of section 33, Act XV of 1948.—In sub-section (*1*) of section 33 of the principal Act, for the word "two" the word "three" shall be substituted

24. Amendment of section 34, Act XV of 1948.—In section 34 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

'(*1*) The affairs of the Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (*1*) of section 144 of the Indian Companies Act, 1913 (VII of 1913), one of whom shall be appointed by the Central Government in consultation with the Comptroller and Auditor-General of India and the other elected in the prescribed manner by the parties mentioned in sub-section (*3*) of section 4, and such remuneration as the Central Government may fix shall be paid to the auditors by the Corporation.

(*ii*) in sub-section (*4*), after the words "The Central Government may" the words "in consultation with the Comptroller and Auditor-General of India" shall be inserted;

(*iii*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) The Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the shareholders.

(*6*) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from the Central Government, undertake such audit and at such times as he may consider necessary.

Provided that where the Central Government is required to make any payment on account of the guarantee given by it under section 5 or sub-section (*2*) of section 27, as the case may be, such audit shall be undertaken by the Comptroller and Auditor-General of India.

(*7*) Every audit report under sub-section (*6*) shall be forwarded to the Central Government and the Government shall cause the same to be laid before both Houses of Parliament."

25. Amendment of section 35, Act XV of 1948.—In section 35 of the principal Act,—

(*i*) in sub-section (*2*), for the words "a classification" the words "a statement showing the classification" shall be substituted;

(*ii*) in sub-section (*3*), for the word "two" the word "three" shall be substituted.

26. Amendment of section 38, Act XV of 1948.—In sub-section (*2*) of section 38 of the principal Act, for the words "or servant" the words "or other employee" shall be substituted.

27. Amendment of section 39, Act XV of 1948.—In section 39 of the principal Act, for the words "or servant" the words "or other employee" shall be substituted.

28. Amendment of section 40, Act XV of 1948.—In the first proviso to section 40 of the principal Act,—

(*i*) after the words, brackets and figures "in pursuance of sub-section (*2*) of section 21" the words, brackets and figures "or sub-section (*2*) of section 27" shall be inserted;

(*ii*) after the words "debentures or bonds" the words, brackets and figures "or on foreign currency borrowed under sub-section (*1*) of section 27" shall be inserted.

29. Insertion of new section 41A in Act XV of 1948.—After section 41 of the principal Act, the following section shall be inserted, namely:—

"41A. *Effect of Act on other laws.*—The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern."

30. Amendment of section 43, Act XV of 1948.—In section 43 of the principal Act,—

(*a*) in sub-section (*1*), after the words "with this Act" the words "and the rules made thereunder" shall be inserted;

(*b*) in sub-section (*2*),—

(*i*) in clause (*k*), for the words "officers and servants and agents" the words "officers, other employees, advisers and agents" shall be substituted;

(*ii*) for clause (*m*), the following clause shall be substituted, namely:—

"(*m*) the taking over of the management of any industrial concern on a breach of its agreement with the Corporation and the powers and duties of directors under section 30C;";

(*iii*) in clause (*n*), for the words "*ad hoc*" the word "advisory" shall be substituted and the word "and" at the end shall be omitted;

(*iv*) after clause (*n*), the following clause shall be inserted, namely:—

"(*nn*) the election of an auditor under sub-section (*1*) of section 34".

31. Amendment of the Schedule, Act XV of 1948.—In the Schedule to the principal Act, the word "Signature", where it occurs for the second time, and the word "Designation" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The shares of the Industrial Finance Corporation are guaranteed by the Central Government under section 5 and the bonds and debentures issued by it are similarly guaranteed under section 21 of the Industrial Finance Corporation Act. There is, however, no provision in the Act for the Central Government to guarantee foreign loans although under section 27 of the Act the Corporation may raise loans in foreign currency. To augment the resources of the Corporation to meet the heavy demand on it, negotiations with the International Bank for Reconstruction and Development have been concluded for a loan subject to a guarantee being given by the Central Government. The Act is being amended to authorise the Central Government to guarantee the loan. The amendment will be only permissive in character and it will not be mandatory for Government to guarantee all such foreign loans.

The following amendments have been considered necessary with a view to strengthening the financial position of the Corporation and to widening its scope as suggested by the International Bank for Reconstruction and Development:—

(*i*) amendment of section 2(*c*) to make shipping companies eligible for loans from the Corporation;

(*ii*) amendment of section 24 to raise the maximum limit of loan to a single industrial concern and to empower the Corporation to grant loans for any amount, if such loans are guaranteed by Government;

(*iii*) a new section is added to provide for a Special Reserve Fund being built up as speedily as possible.

The opportunity to amend the Act is also being utilised to carry out certain further amendments to improve the operation of the Act and to bring it in line with the State Financial Corporations Act, 1951. In particular provision has been made for associating the Comptroller and auditor-General of India closely with the audit of the accounts of the Corporation.

C. D. DESHMUKH.

NEW DELHI;
The 4th November, 1952.

Notes on clauses

Clause 2.—Shipping companies are not at present eligible for grant of financial assistance by the Corporation and the intention is to make them so eligible.

Clause 3.—In view of Government's responsibility on account of the guarantees given by the Government in terms of the Act and also to enable proper representation being given to all interests, provision is being made for the nomination of four Directors instead of three as at present. The Deputy Managing Director of the Corporation will be included in the Board of Directors of the Corporation without voting rights.

Clause 6.—At present there is no provision for the removal of the Managing Director and under section 9 of the Act once a Managing Director is appointed, he will continue in office for 4 years unless he becomes subject to any of the disqualifications mentioned in section 12. It is conceivable that a situation might arise when a Managing Director may have to be removed. This power is being taken on the analogy of the power vested in Government under the Reserve Bank Act to remove the Governor.

Clause 7.—Provision is being made for filling up of casual vacancy of Managing Director.

Clause 10.—The Corporation is now entitled to keep their cash balances in deposit with the Reserve Bank or the Imperial Bank only. It is considered desirable that the Corporation should also be authorised to keep their balances in deposit with a Scheduled Bank or a State Co-operative Bank in consultation with the Reserve Bank.

Clause 11.—The Corporation will be authorised to borrow from the Reserve Bank for short periods, not exceeding 90 days in order to avoid the necessity for the sale of securities in the Corporation's investment portfolio when it is not convenient to do so. The Corporation is, similarly, being authorised to borrow from the Reserve Bank for periods not exceeding 18 months, pending floatation of their own bonds on the market.

Clause 12.—It is desirable that the agency of the Corporation should be available to the Central Government or the International Bank for Reconstruction and Development for the purpose of supervision, recovery, etc. of loans or advances granted by either of them to industrial concerns in India.

Clause 13.—The present limit of Rs. 50 lakhs which the Corporation may grant to a single concern has been found to be inadequate and is being raised to Rs. 1 crore. No such limit is considered necessary in the case of loans and advances granted by the Corporation in respect of which the repayment of the principal and the payment of interest are guaranteed by the Central Government on the recommendation of the Corporation.

Clauses 14, 15, 18, 19, 25, 26 and 27.—Amendments follow the provisions in the State Financial Corporation Act, 1951.

Clause 16.—Section 27 of the Act does not at present provide for the guaranteeing by the Central Government of borrowings by the Corporation in foreign currency though section 21 provides that borrowings in Indian currency by means of bonds and debentures are to be so guaranteed. The provision to guarantee foreign currency borrowings will be only permissive and actual guarantee will be given by the Government only when necessary. As the Corporation is liable to income-tax and its profits in excess of 5 per cent. will accrue to Government, it is proposed to exempt the Corporation from exchange loss and the profit and loss on exchange arising out of foreign borrowings will be on Government account.

Clause 17.—Specific provision is being made to make it clear that the expenses of management incurred by the Corporation in respect of any industrial concern taken over by the Corporation will be the liability of the industrial concern. It is also being provided how monies realised by the Corporation while managing an industrial concern taken over by them should be applied.

Clause 20.—Detailed provision is being made in regard to the various rights and powers of the Corporation in respect of industrial concerns the management of which has been taken over by the Corporation.

Clauses 21 and 28.—Consequential to clause 16.

Clause 22.—The new section intends to create a special reserve fund with a view to strengthening the financial position of the Corporation. As the Corporation is liable to income-tax and its shareholders are also entitled to a guaranteed minimum dividend, it cannot in the normal way build up an adequate reserve speedily.

Clause 24.—The amendment is intended to bring section 34 in line with the State Financial Corporation Act, 1951 with a view to associating the Comptroller and Auditor General of India more closely with the audit of the affairs of the Corporation.

Clause 29.—The new section is intended to override the application of the provisions of other statutes to the extent they are inconsistent with the provisions of this Act; but the other provisions in those laws shall continue to apply.

BILL No. 106 OF 1952

A Bill further to amend the Punjab Municipal Act, 1911, as in force in the State of Delhi.

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Punjab Municipal (Delhi Amendment) Act, 1952.

(*2*) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 159, Punjab Act III of 1911, as in force in Delhi.—In sub-section (*1*) of section 159 of the Punjab Municipal Act, 1911, as in force in the State of Delhi (hereinafter referred to as the principal Act), the words "Subject to the provisions hereinafter contained with respect to the customary rights of sweepers" shall be omitted.

3. Amendment of section 160, Punjab Act III of 1911, as in force in Delhi.—In section 160 of the principal Act, clause (*a*) shall be omitted.

4. Substitution of new section for section 165, Punjab Act III of 1911, as in force in Delhi.—For section 165 of the principal Act, the following section shall be substituted, namely:—

"165. *Punishment of sweeper for discontinuing to do house-scavenging.*—Should any sweeper, who is under a contract to do the house-scavenging of a house or building, discontinue to do such house-scavenging without having given fourteen days' notice to his employer or without reasonable cause, he shall, on conviction, be punishable with a fine which may extend to ten rupees."

STATEMENT OF OBJECTS AND REASONS

Numerous public appeals made to the Delhi Municipal Committee reveal that customary sweepers have become negligent and irregular in discharging their duty of house-scavenging. The existing insanitary conditions in the residential areas of Delhi are found to be due largely to the persistent carelessness of such sweepers and their irresponsible manner of dirt disposal. The statutory protection afforded to customary sweepers stands in the way of the Municipal Committee making alternative arrangements for house-scavenging even at the request of the owners of houses. It is, therefore, proposed to clothe the Committee with necessary powers in this behalf.

In view of clause (*c*) of the proviso to section 21 of the Government of Part C States Act, 1951, the legislation has to be undertaken by Parliament and not by the Legislature of the State of Delhi.

AMRIT KAUR.

NEW DELHI;
The 4th November, 1952.

The following Bill was introduced in the House of the People on 12th November, 1952 —

BILL No. 108 OF 1952

A Bill further to amend the West Bengal Evacuee Property Act, 1951, as extended to Tripura.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the West Bengal Evacuee Property (Tripura Amendment) Act, 1952.

2. **Amendment of section 2, West Bengal Act V of 1951, as extended to Tripura.**—In clause (*b*) of section 2 of the West Bengal Evacuee Property Act, 1951, as extended to the State of Tripura by the notification of the Government of India in the Ministry of States, No. 101-R.C., dated the 9th May, 1951 (hereinafter referred to as the principal Act), for the words and figures "the 15th day of June" the words and figure "the 9th day of July" shall be substituted and shall be deemed always to have been substituted.

3. **Insertion of new section 5A in West Bengal Act V of 1951, as extended to Tripura.**—After section 5 of the principal Act, the following section shall be inserted, namely —

"5A. *Special provision in respect of bargadars.*—(*1*) Where an evacuee who, as a bargadar, was in actual possession of any agricultural land on or after the 15th day of August, 1947, has returned to Tripura before the appointed day and has, before the 6th day of November, 1952, made an application in writing to the Collector for being restored to the possession of that land as a bargadar, then, notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, the applicant shall be, and shall be deemed to have been, entitled to be restored to actual possession of that land as a bargadar, at the beginning of the next crop season which would be available after the application, on the same terms and conditions, as far as may be, as were applicable to him as such bargadar when he left Tripura.

(*2*) On any such application as is referred to in sub-section (*1*), the Collector shall, after making such summary inquiry as he thinks fit and if satisfied that the applicant should be restored to the possession of any agricultural land as a bargadar, place the applicant or empower any officer subordinate to him to place the applicant in the possession of that land on the same terms and conditions as far as may be, as were applicable to him when he left Tripura, and for such purpose, the Collector or the officer, as the case may be, may use or cause to be used such force as may be necessary.

Explanation.—For the purposes of this section, a 'bargadar' means a person who, under the system generally known as *adhi*, *barga or bhag*, cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person."

4. **Repeal.**—(*1*) The West Bengal Evacuee Property (Tripura Amendment) Ordinance, 1952 (VI of 1952), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

The Agreement which was entered into between India and Pakistan on the 8th April, 1950, provided that legislation relating to the care and custody of evacuee property would be enacted by East Bengal, West Bengal, Assam and Tripura. Accordingly, the West Bengal Evacuee Property Act, 1951, and the amending Act of the same year were extended to Tripura by notification It was also agreed at the Chief Secretaries' conference held on the 14th and 15th March, 1951, that further amendments would be made in the Act as extended to Tripura in respect of (i) "appointed day" *i.e.*, the limit of time before which an evacuee has to return to the State to be able to claim the restoration of his property, and (ii) grant of certain concessions to bargadars. These amendments however, were not carried out as the Chief Commissioner of Tripura did not then think these modifications necessary or feasible. Subsequently at the meetings of the Chief Secretaries held in pursuance of the Agreement, complaints were made from the Pakistan side about the non-observance of the agreed modifications, and it was considered essential to implement the undertaking. As the Supreme Court had ruled in another connection that substantial modifications in a law could not be made by an extending notification, the modifications had to be made by Central legislation. As the matter was considered urgent, the West Bengal Evacuee Property (Tripura Amendment) Ordinance, 1952 was promulgated. The present Bill merely seeks to replace the Ordinance by an Act of Parliament.

K. N. KATJU.

NEW DELHI;

The 2nd November, 1952.

M. N. KAUL,
Secretary.

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